

United States Court of Appeals
for the
District of Columbia Circuit



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

OCTOBER TERM, 1908.

No. 1905.

563

THE CATHOLIC UNIVERSITY OF AMERICA, A CORPORATION, APPELLANT,

vs.

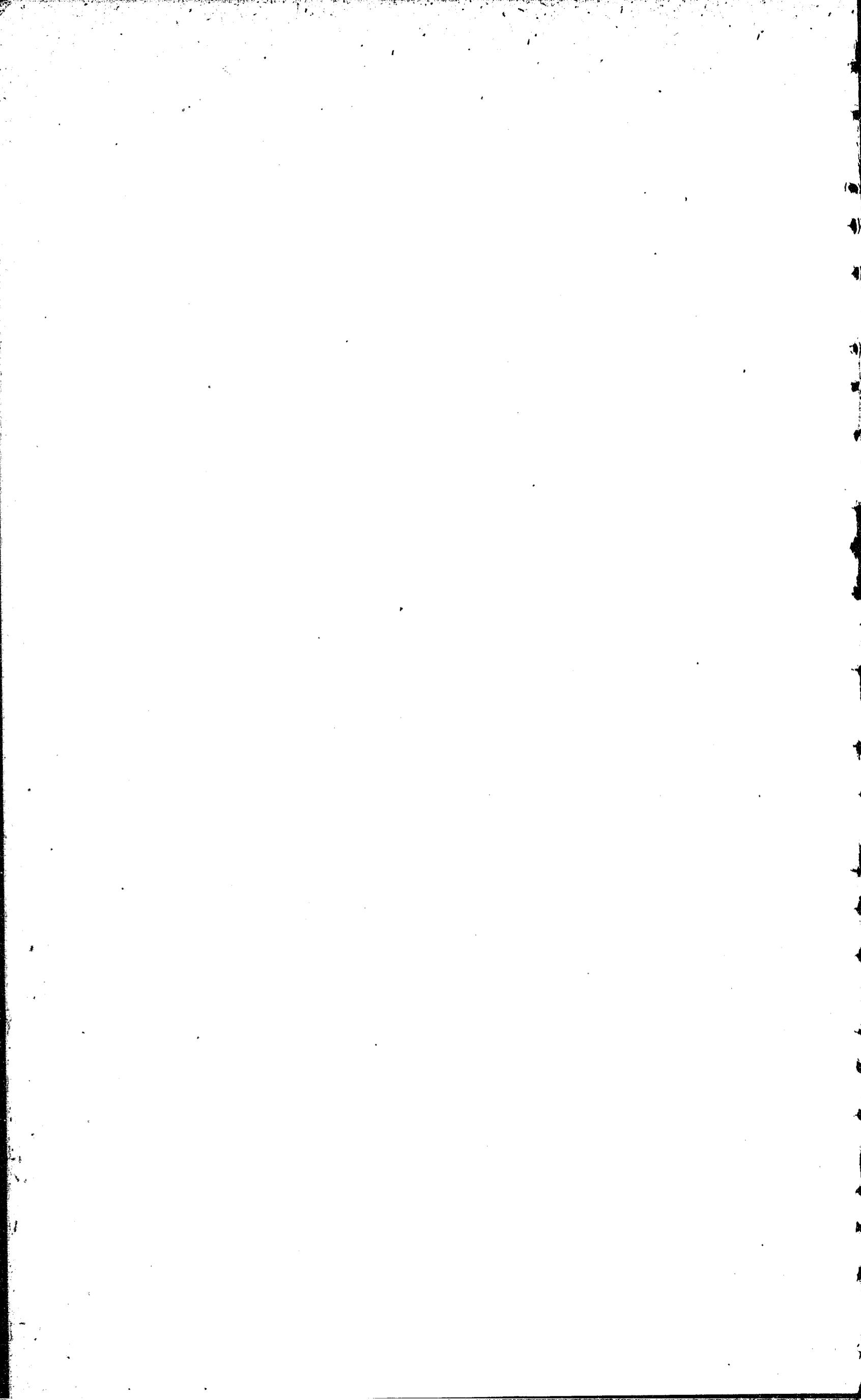
ALEXANDER PORTER MORSE, DANIEL B. CLARKE WAGGAMAN, AND THE UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA, A CORPORATION, EXECUTORS OF THE ESTATE OF DANIEL B. CLARKE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

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COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

OCTOBER TERM, 1908.

No. 1905.

CATHOLIC UNIVERSITY OF AMERICA, A CORPORATION,
APPELLANT,

vs.

ALEXANDER PORTER MORSE, DANIEL B. CLARKE
WAGGAMAN, AND THE UNION TRUST COMPANY,
EXECUTORS OF THE ESTATE OF DANIEL B. CLARKE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

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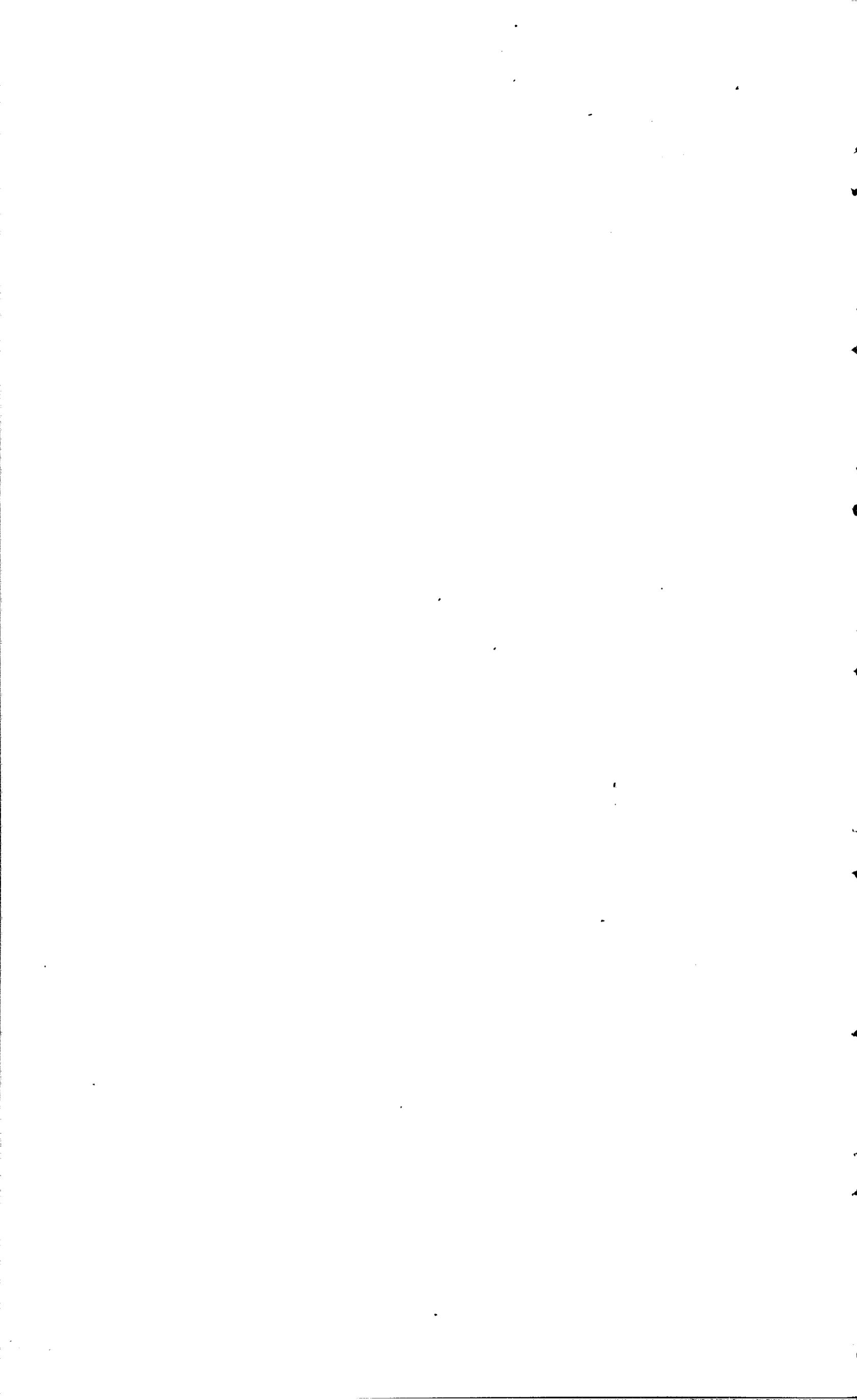
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In the Court of Appeals of the District of Columbia.

No. 1905.

THE CATHOLIC UNIVERSITY OF AMERICA, a Corporation, Appellant,
vs.
ALEXANDER PORTER MORSE ET AL.

a Supreme Court of the District of Columbia.

At Law. No. 49529.

THE CATHOLIC UNIVERSITY OF AMERICA, a Corporation, Plaintiff,
vs.
JOHN LENTHAL WAGGAMAN and ALEXANDER PORTER MORSE,
DANIEL B. CLARKE WAGGAMAN and THE UNION TRUST COMPANY
OF THE DISTRICT OF COLUMBIA, a Corporation, Executors of the
Estate of Daniel B. Clarke, Defendants.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Declaration.*

Filed June 11, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 49529.

THE CATHOLIC UNIVERSITY OF AMERICA, a Corporation, Plaintiff,
vs.
JOHN LENTHAL WAGGAMAN and ALEXANDER PORTER MORSE,
DANIEL B. CLARKE WAGGAMAN and THE UNION TRUST COMPANY
OF THE DISTRICT OF COLUMBIA, a Corporation, Executors of the
Estate of Daniel B. Clarke, Defendants.

1. The plaintiff, The Catholic University of America, a corporation duly incorporated and having its habitat in the District of Co-

lumbia, sues the defendants John Lenthal Waggaman, and Alexander Porter Morse, Daniel B. Clarke Waggaman and the Union Trust Company of the District of Columbia, a corporation, Executors of the Estate of Daniel B. Clarke, deceased, duly appointed and qualified by an order of the Probate Court of the District of Columbia passed on the 11th day of June, 1906, for money payable by the defendants to the plaintiff for that heretofore, to wit, on the 26th day of October, A. D. 1899, one Thomas E. Waggaman, now deceased, as principal, and the defendant John Lenthal Waggaman and one Daniel B. Clarke, now deceased, as sureties, by their certain writing obligatory, sealed with their seals, the date whereof is the

2 willing obligors, sealed with their seals, the date whereof is the
day and year last aforesaid, and which is now shown to the
court, acknowledged themselves to be held and firmly bound
unto the plaintiff in the full and just sum of \$200,000.00,
lawful money of the United States, the payment of which sum to
the said plaintiff, or its certain attorneys, well and truly to be made,
the said Thomas E. Waggaman, John Lenthal Waggaman and
Daniel B. Clarke did bind themselves and each of them, their and
each of their heirs, executors and administrators jointly and sev-
erally.

And the plaintiff further avers that the said writing obligatory was and is subject to a condition thereunder written as follows, that is to say, that the condition of said obligation was such that if the said Thomas E. Waggaman should well and truly account for and pay over to the said University, the plaintiff herein, or the proper officer thereof, all sums of money collected or received by him for *on or* behalf of said University, then said obligation should be null and void, otherwise to be and remain in full force and virtue; and plaintiff avers that after the execution and delivery of said writing obligatory to the plaintiff, the said Thomas E. Waggaman, on divers dates, collected or received large sums of money for or on behalf of, and owned by said plaintiff, amounting in the aggregate to \$876,168.96, all of which moneys it was the duty of said Thomas E. Waggaman to account for and pay over to the said plaintiff, or the proper officer thereof, but the plaintiff avers that the said Thomas E. Waggaman did not during his lifetime, nor did his heirs, executors, administrators or other personal representatives since his death

3 well and truly account for and pay over to the said plaintiff, or the proper officer thereof, any of the moneys collected or received by him for or on behalf of said University as aforesaid, but has failed, refused and neglected to account for the same, although due demand was made upon him therefor, to the great damage of the plaintiff, and contrary to the form and effect of the condition of said writing obligatory hereinbefore referred to. And the plaintiff says that by reason of the execution and delivery of said bond and the condition thereto annexed, which condition has been broken as aforesaid, a cause of action has accrued to the plaintiff against the defendants.

Wherefore the plaintiff brings suit and claims the sum of \$200,000.00, besides costs.

2. The plaintiff, The Catholic University of America, a corpora-

tion duly incorporated and having its habitat in the District of Columbia, sues the defendants, John Lenthal Waggaman, and Alexander Porter Morse, Daniel B. Clarke Waggaman and the Union Trust Company of the District of Columbia a corporation, Executors of the Estate of Daniel B. Clarke, deceased, duly appointed and qualified by an order of the Probate Court of the District of Columbia, passed on the 11th day of June, 1906, for money payable by the defendants to the plaintiff for that heretofore, to wit, on the 26th day of October, A. D. 1899, one Thomas E. Waggaman, now deceased, as principal, and the defendant John Lenthal Waggaman and one Daniel B. Clarke, now deceased, as surety, by their certain writing obligatory, sealed with their seals, the date whereof is the
4 day and year last aforesaid, and which is now shown to the court, acknowledged themselves to be held and firmly bound unto the plaintiff in the full and just sum of \$200,000.00, lawful money of the United States, the payment of which sum to the said plaintiff, or its certain attorneys, well and truly to be made, the said Thomas E. Waggaman, John Lenthal Waggaman and Daniel B. Clarke did bind themselves and each of them, their and each of their heirs, executors and administrators, jointly and severally.

And the plaintiff further avers that the said writing obligatory was and is subject to a condition thereunder written as follows, to wit: "The condition of the above obligation is such that if said Thomas E. Waggaman shall well and truly account for and pay over to said University, or the proper officer thereof, all sums of money collected or received by him for or on behalf of said University, and shall safely keep, account for and deliver up to said University all notes or other evidences of indebtedness, belonging to said University, which shall be intrusted to him for safe keeping, or for any other purpose, then this obligation to be null and void, otherwise to be and remain in full force and virtue."

And the plaintiff avers that after the execution and delivery of said writing obligatory to the plaintiff, there came into the possession of the said Thomas E. Waggaman divers sums of money belonging to the said plaintiff, amounting in the aggregate to \$876,168.96, and there came into his possession divers and large numbers of notes
5 belonging to the plaintiff and which were intrusted to him for safe keeping, all of which moneys and notes it was the duty of the said Thomas E. Waggaman to account for and deliver to the said plaintiff upon its demand, but the plaintiff avers that the said Thomas E. Waggaman did not well and truly account for and pay over to the said plaintiff, or the proper officer thereof, all the sums of money collected or received by him for or on behalf of said plaintiff, and he did not safely keep, account for and deliver to said plaintiff all the notes or other evidences of indebtedness belonging to said plaintiff which were intrusted to him for safe keeping, but he failed, refused and neglected to account for the same, although due demand was made upon him therefor, to the great damage of the plaintiff, contrary to the form and effect of the condition of the said writing obligatory hereinbefore referred to.

And the plaintiff says that by reason of the execution and delivery of said bond and the condition thereto annexed, which condition has been broken as aforesaid, a cause of action has accrued to the plaintiff against the defendants.

Wherefore the plaintiff brings suit and claims the sum of \$200,-000.00, besides costs.

JOHN W. YERKES,
JOHN J. MAMILTON,
Attorneys for Plaintiff.

Notice to Plead.

6 The defendants are to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the date of service hereof; otherwise judgment.

JOHN W. YERKES,
JOHN J. HAMILTON,
Attorneys for Plaintiff.

Memorandum.

June 12, 1907.—Summons returned served defendants Daniel B. Clarke Waggaman and Union Trust Company, and on June 13, 1907 returned served as to defendant Alexander Porter Morse.

Pleas of Defendants Morse, Waggaman, and Union Trust Company.

Filed July 5, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 49529.

THE CATHOLIC UNIVERSITY OF AMERICA, Plaintiff,
against
JOHN LENTHAL WAGGAMAN, and against ALEXANDER PORTER MORSE, DANIEL B. CLARKE WAGGAMAN, and THE UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA, Executors of the Estate of Daniel B. Clarke, Deceased, Defendants.

7 The said defendants Alexander Porter Morse, Daniel B. Clarke Waggaman and the Union Trust Company of the District of Columbia, Executors of the Estate of Daniel B. Clarke, deceased, say as follows:

I. To the first count in the declaration contained:

1. That the supposed writing obligatory in the said first count mentioned, is not the deed of the said Daniel B. Clarke, deceased.
2. That after the execution and delivery of the said supposed writing obligatory, the said Thomas E. Waggaman, in the said supposed writing obligatory mentioned, neither collected, nor received,

in his lifetime, any sum, or sums, of money, for or on behalf of the plaintiff.

3. That the said Thomas E. Waggaman, in his lifetime, did well and truly account for and pay over unto the plaintiff, all sums of money by him, after the execution and delivery of the said supposed writing obligatory, collected or received, for or on behalf of the plaintiff.

4. That, after the execution and delivery of the said supposed writing obligatory, and, in the lifetime of the said Thomas E. Waggaman, and in the lifetime, and without the knowledge or assent of the said Daniel B. Clarke, the plaintiff, gave and extended unto the said Thomas E. Waggaman long periods of time certain, for his accounting for any payment over unto the plaintiff, or its proper officer, the supposed sums of money, by him, the said Thomas E. Waggaman, after the execution and delivery of the said supposed

writing obligatory, collected or received for, or on behalf of
8 the plaintiff; that after his collection and receipt of the said

supposed sums of money, and before his payment of any of them unto the plaintiff, or its proper officer, and before the expiration of any of the periods so given and extended, as aforesaid, the said Thomas E. Waggaman, (who had, been to-wit: on September 1, 1904, by the plaintiff removed both as agent and officer of the plaintiff) was, by this court, on the 26th day of September 1904, adjudged a bankrupt.

5. That, after the execution and delivery of the said supposed writing obligatory, the plaintiff authorized empowered and commanded the said Thomas E. Waggaman, in his lifetime, to invest, in certain promissory notes, all of the sums of money by the said Thomas E. Waggaman, after the execution and delivery of the said supposed writing obligatory, collected or received, for or on behalf of the plaintiff; that the said Thomas E. Waggaman, in his lifetime, under the authority, power and command aforesaid, did, in fact, invest, in the said promissory notes, all of the sums of money by him, the said Thomas E. Waggaman, after the execution and delivery of the said supposed writing obligatory, collected or received, for or on behalf of the plaintiff and that the said Thomas E. Waggaman, in his lifetime, did well and truly account for, and actually deliver up, unto the plaintiff all and every of the said promissory notes wherein he had so invested the said sums of money as aforesaid.

6. That, after the execution and delivery of the said supposed writing obligatory, the plaintiff, in the lifetime of the said
9 Thomas E. Waggaman and of the said Daniel B. Clarke, and without the knowledge or assent of the said Daniel B. Clarke, authorized, empowered and commanded the said Thomas E. Waggaman, to lend unto himself, the said Thomas E. Waggaman, upon certain interest-bearing promissory notes, payable at remote periods, and after the 31st day of December 1904, and whereof and whereon, both as to principal and interest, the said Thomas E. Waggaman was guarantor of payment unto the plaintiff, all of the sums of money by the said Thomas E. Waggaman, after the execution and delivery of the said supposed writing obligatory, collected or received

for or on behalf of the plaintiff; that, under the authority, power and command aforesaid the said Thomas E. Waggaman, in his lifetime, and in the lifetime and without the knowledge or assent of the said Daniel B. Clarke, did lend unto himself, upon the said interest-bearing promissory notes, payable and guaranteed as aforesaid, all of the sums of money by the said Thomas E. Waggaman, after the execution and delivery of the said supposed writing obligatory, collected or received for or on behalf of the plaintiff; that none of the parties, (the said Thomas E. Waggaman excepted) to any of the said promissory notes were ever, or now are, possessed of any financial estate; that, on or about the 1st day of September, 1904, the said Thomas E. Waggaman ceased to be agent or officer of the plaintiff, and, was, thereafter, and on September 26, 1904, and before the payment or the maturity of any of the said promissory notes, in his lifetime, by this court adjudged a bankrupt; that before the
10 1st day of September 1904, the said John Lenthal Waggaman became, and still remains, insolvent; and that prior to the day and year last above written, the said Thomas E. Waggaman, in his lifetime, did well and truly account for, and actually deliver up, unto the plaintiff, all and every of the said interest-bearing promissory notes aforesaid.

II. To the first breach in the second count of the declaration assigned.

1. That after the execution and delivery of the said supposed writing obligatory, the said Thomas E. Waggaman, in the said supposed writing obligatory mentioned, neither collected, nor received, in his lifetime, any sum, or sums, of money, for or on behalf of the plaintiff.

2. That the said Thomas E. Waggaman, in his lifetime, did well and truly account for and pay over unto the plaintiff, all sums of money by him, after the execution and delivery of the said supposed writing obligatory, collected or received, for or on behalf of the plaintiff.

3. That, after the execution and delivery of the said supposed writing obligatory, and, in the lifetime of the said Thomas E. Waggaman, and in the lifetime, and without the knowledge or assent of the said Daniel B. Clarke, the plaintiff, gave and extended unto the said Thomas E. Waggaman long periods of time certain, for his accounting for and payment over unto the plaintiff, or its proper officer, the supposed sums of money, by him, the said Thomas

E. Waggaman, after the execution and delivery of the said
11 supposed writing obligatory, collected or received for, or on behalf of the plaintiff; that after his collection and receipt of the said supposed sums of money, and before his payment of any of them unto the plaintiff, or its proper officer, and before the expiration of any of the periods so given and extended, as aforesaid, the said Thomas E. Waggaman (who had been, to-wit: on September 1, 1904, by the plaintiff removed both as agent and officer of the plaintiff) was, by this court, on the 26th day of September 1904, adjudged a bankrupt.

4. That, after the execution and delivery of the said supposed

writing obligatory, the plaintiff authorized empowered and commanded the said Thomas E. Waggaman, in his lifetime, to invest, in certain promissory notes, all of the sums of money by the said Thomas E. Waggaman, after the expiration and delivery of the said supposed writing obligatory, collected or received, for or on behalf of the plaintiff; that the said Thomas E. Waggaman, in his lifetime, under the authority, power and command aforesaid, did, in fact, invest, in the said promissory notes, all of the sums of money by him, the said Thomas E. Waggaman, after the execution and delivery of the said supposed writing obligatory, collected or received, for or on behalf of the plaintiff; and that the said Thomas E. Waggaman, in his lifetime, did well and truly account for, and actually deliver up, unto the plaintiff all and every of the said promissory notes wherein he had so invested the said sums of money as aforesaid.

12 5. That, after the execution and delivery of the said supposed writing obligatory, the plaintiff, in the lifetimes of the said Thomas E. Waggaman and of the said Daniel B. Clarke, and without the knowledge or assent of the said Daniel B. Clarke, authorized, empowered and commanded the said Thomas E. Waggaman, to lend unto himself, the said Thomas E. Waggaman, upon certain interest-bearing promissory notes, payable at remote periods, and after the 31st day of December, 1904, and whereof and whereon, both as to principal and interest, the said Thomas E. Waggaman was guarantor of payment unto the plaintiff, all of the sums of money by the said Thomas E. Waggaman, after the execution and delivery of the said supposed writing obligatory, collected or received for or on behalf of the plaintiff; that, under the authority, power and command aforesaid, the said Thomas E. Waggaman, in his lifetime, and in the lifetime and without the knowledge or assent of the said Daniel B. Clarke, did lend unto himself, upon the said interest-bearing promissory notes, payable and guaranteed as aforesaid, all of the sums of money by the said Thomas E. Waggaman, after the execution and delivery of the said supposed writing obligatory, collected or received for or on behalf of the plaintiff; that none of the parties, (the said Thomas E. Waggaman excepted), to any of the said promissory notes were ever, or now are, possessed of any financial estate; that, on or about the 1st day of September, 1904, the said Thomas E. Waggaman ceased to be agent or officer of the plaintiff, and, was, thereafter, and on September 26, 1904, and before the

13 payment or the maturity of any of the said promissory notes, in his lifetime, by this court adjudged a bankrupt, that before the 1st day of September, 1904, the said John Lenthal Waggaman became, and still remains, insolvent; and that prior to the day and year last above written, the said Thomas E. Waggaman, in his lifetime, did well and truly account for, and actually deliver up, unto the plaintiff, all and every of the said interest-bearing promissory notes aforesaid.

III. To the second breach in the second count of the declaration assigned.

That the said Thomas E. Waggaman in his lifetime, did safely

keep, account for and deliver up unto the plaintiff, all and all manner of notes, or other evidences of indebtedness, unto the plaintiff belonging, and by the plaintiff, after the execution and delivery of the said writing obligatory, unto the said Thomas E. Waggaman, entrusted for safe keeping.

JOHN SELDEN,
Attorney for said Defendant Executors.

We, Alexander Porter Morse and Daniel B. Clarke Waggaman, two of the above named defendants, on oath say, that the first plea above to the first count in the declaration is true.

ALEXANDER PORTER MORSE.
DANIEL B. CLARKE WAGGAMAN.

14 Sworn and subscribed by the above Alexander Porter Morse and Daniel B. Clarke Waggaman, in the District of Columbia, before me, a Notary Public therein, this 2nd day of July, A. D. 1907.

[SEAL.] WM. M. BEALL,
Notary Public in and for the District of Columbia.

Joiner in Issue.

Filed August 9, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 49529.

THE CATHOLIC UNIVERSITY OF AMERICA
vs.
JOHN LENTHALL WAGGAMAN ET AL.

Now comes the plaintiff and joins issue on all of the pleas of the defendants, Alexander Porter Morse, Daniel B. Clarke Waggaman and the Union Trust Company of the District of Columbia, Executors of the Estate of Daniel B. Clarke, deceased, filed to the declaration in the above-entitled cause, and to each count thereof.

JOHN W. YERKES,
JOHN J. HAMILTON,
Attorneys for Plaintiff.

15 Mr. John Selden, Attorney for Defendant Executors.

Please take notice that the issues joined in the above-entitled cause will be tried at the next term of court.

JOHN W. YERKES,
JOHN J. HAMILTON,
Attorneys for Plaintiff.

Stipulation of Counsel.

Filed February 12, 1908.

In the Supreme Court of the District of Columbia.

Law. No. 49529.

CATHOLIC UNIVERSITY OF AMERICA

vs.

JOHN L. WAGGAMAN ET AL.

It is stipulated by and between counsel for the respective parties hereto that the sum total of monies received by Thomas E. Waggaman from the Catholic University of America after the date of the bond sued on herein, to wit Oct. 26, 1899, was \$89,323.41; that the total amount of monies paid over to the University after said date, Oct. 26, 1899, was \$10,000.

2. It is further stipulated that of the total of \$876,168.96 of notes turned over by said Waggaman to the University only those amounting in face value to \$149,824.11 bear date on or after Oct. 16 26, 1899, and of this total amount of \$149,824.11, \$79,223.41 represents monies received by said Waggaman from the University after the date of said bond, and \$70,500.70 of the face amount of said notes represents monies received by said Waggaman from the University before the execution of said bond.

There is no stipulation, however, with regard to the actual value of the notes aggregating the said sum of \$149,824.11.

3. It is further stipulated that Daniel B. Clarke died June 3, 1906; that Thomas E. Waggaman died June 23, 1906 and that Christine Waggaman is his administratrix.

HAMILTON, COLBERT, YERKES &
HAMILTON,

Attorneys for Plaintiff.

JOHN SELDEN,
HOLMES CONRAD, *for D'f'ts.*

Supreme Court of the District of Columbia.

WEDNESDAY, February 12, 1908.

Session resumed pursuant to adjournment, Mr. Justice Wright presiding.

* * * * *

17

At Law. No. 49529.

THE CATHOLIC UNIVERSITY OF AMERICA, a Corporation, Pl'tf,
vs.

JOHN LENTHAL WAGGAMAN, and ALEXANDER PORTER MORSE,
DANIEL B. CLARKE WAGGAMAN and THE UNION TRUST COMPANY
OF THE DISTRICT OF COLUMBIA, a Corporation, Executors of the
Estate of Daniel B. Clarke, Def'ts.

Now come here as well the plaintiff by its Attorneys Messrs. Hamilton, Colbert, Yerkes and Hamilton as the defendants Alexander

Porter Morse, Daniel B. Clarke Waggaman and the Union Trust Company of the District of Columbia, a corporation, Executors of the Estate of Daniel B. Clarke by their Attorneys Messrs. John Selden and Holmes Conrad; and thereupon the defendants crave oyer of the bond in suit, and the same is read to them; whereupon the plaintiff moves the Court for leave to file an amended declaration here presented to the Court, which leave is granted, and said amended declaration is accordingly filed; thereupon the defendants demur to the said amended declaration, and said demurrer is hereby sustained, with leave to the plaintiff to amend said declaration; whereupon the said plaintiff in open Court says it does not care further to amend but will stand upon the declaration as originally filed, thereupon comes a jury of good and lawful men of this District, to wit;

William Hessick
 Michael J. Gartland
 Louis P. Weber
 Philip P. Padgett
 James H. Caton
 Fred J. Stearns

Wallace W. Kimmel
 J. Harry Schul
 Henry Latterner
 William C. Johnson
 John E. Thompson
 D. Edgar Stephen

18 who, being duly sworn to try the issue herein joined, after a partial hearing of the evidence, are respite until the meeting of the Court to-morrow.

Amended Declaration.

Filed February 12, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 49529.

THE CATHOLIC UNIVERSITY OF AMERICA

vs.

JOHN L. WAGGAMAN ET AL.

Now comes the plaintiff, leave of the Court being first had and obtained, and amends the first count of said declaration filed in the above-entitled cause, so that it shall read, after the semi-colon near the end of the 13th line from the top of the second page of said declaration, as follows:

"And the plaintiff avers that before and at the time of the execution and delivery of said writing obligatory, and subsequent thereto, and before and after the execution and delivery and acceptance of said writing obligatory by the plaintiff, the said Thomas E. Waggaman on divers dates came into possession of, collected and received large sums of money for, or on behalf of, and owned by said plaintiff, amounting in the aggregate to \$876,168.96, all of which

19 monies it was the duty of said Thomas E. Waggaman to account for and pay over to the said plaintiff, or the proper officer thereof," and so on thereafter as set forth in said declaration.

2. Plaintiff further, with leave of the Court first had and obtained, amends the second count of its declaration filed in the above-entitled cause, so that the first paragraph on page four shall read as follows:

"And the plaintiff avers that before the execution and delivery of said writing-obligatory and at the time of its execution and delivery and subsequent thereto, and before and after the execution, delivery and acceptance of said writing-obligatory by the plaintiff, there came into the possession of said Thomas E. Waggaman divers sums of money belonging to said plaintiff, amounting in the aggregate to \$876,168.96," and so on thereafter as set forth in said declaration.

JOHN W. YERKES,
JOHN J. HAMILTON,
Attorneys for Plaintiff.

Memorandum.

February 18, 1908.—Verdict for Defendants.

20 *Motion for New Trial.*

Filed February 21, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 49529.

THE CATHOLIC UNIVERSITY OF AMERICA
vs.
JOHN L. WAGGAMAN ET AL.

Now comes the plaintiff and moves the court to set aside the verdict in the above-entitled cause and to grant a new trial for the following reasons, to wit:

1. Because said verdict is contrary to the evidence.
2. Because said verdict is contrary to the weight of the evidence.
3. Because said verdict is contrary to law.
4. Because of errors of law committed by the court during the trial of said cause.
5. Because of errors of law committed by the court in instructing the jury to return a verdict for the defendants.

JOHN W. YERKES,
JOHN J. HAMILTON,
Attorneys for Plaintiff.

Supreme Court of the District of Columbia.

FRIDAY, February 28, 1908.

Session resumed pursuant to adjournment, Mr. Justice Wright presiding.

* * * * *

At Law. No. 49529.

THE CATHOLIC UNIVERSITY OF AMERICA, Pl't'fs,
vs.

JOHN LENTHAL WAGGAMAN and ALEXANDER PORTER MORSE, DANIEL B. CLARKE WAGGAMAN and THE UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA, a Corporation, Executors of the Estate of Daniel B. Clarke, Def'ts.

Upon hearing the plaintiff's motion for a new trial, it is considered that the same be, and hereby is overruled, and judgment on verdict ordered;

Therefore it is considered that the plaintiff take nothing by its suit, and that the defendants go thereof without day, and recover against the plaintiff the costs of their defense, to be taxed by the Clerk, and have execution thereof.

The plaintiff notes an appeal to the Court of Appeals of the District of Columbia, from the judgment of the Court in this cause, and the penalty of the bond for costs on said appeal is hereby fixed in the sum of one hundred dollars (\$100).

Memorandum.

March 6, 1908.—Appeal bond filed.

Designation of Record on Appeal.

Filed March 12, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 49529.

THE CATHOLIC UNIVERSITY OF AMERICA
vs.
JOHN L. WAGGAMAN ET AL.

The Clerk will please include in the record on appeal the following papers:

1. Declaration, notice to plead, &c.
2. Summons returned served as to defendants D. B. C. Wagga-man and Union Trust Company.

3. Summons returned served as to defendant Morse.
4. Pleas of defendants Morse, Waggaman and Union Trust Company.
5. Joinder of issue.
6. Stipulation of counsel.
7. Amended declaration.
8. Demurrer to amended declaration sustained, &c.
 9. Verdict for defendants.

23 10. Motion for new trial.
 11. Motion for new trial overruled, judgment, appeal noted and bond fixed at \$100.00.
 12. Appeal bond.

JOHN W. YERKES,
 JOHN J. HAMILTON,
Attorneys for Plaintiff.

Supreme Court of the District of Columbia.

MONDAY, March 30, 1908.

Session resumed pursuant to adjournment, Mr. Justice Wright presiding.

* * * * * *

At Law. No. 49529.

THE CATHOLIC UNIVERSITY OF AMERICA, Pl't'f,
vs.

JOHN LENTHAL WAGGAMAN ET AL., Executors of the Estate of Daniel B. Clarke, Def'ts.

It is by the Court ordered that the January Term 1908 of the Supreme Court of the District of Columbia, be, and the same is hereby prolonged for the period of thirty-eight (38) days from February 28, 1908 for the purpose of settling the bill of exceptions in this cause.

24 Supreme Court of the District of Columbia.

FRIDAY, April 3d, 1908.

Session resumed pursuant to adjournment, Mr. Justice Wright presiding.

* * * * * *

At Law. No. 49529.

THE CATHOLIC UNIVERSITY OF AMERICA, Pl't'f,
vs.

JOHN L. WAGGAMAN ET AL., Def'ts.

Now comes here the plaintiff by its Attorneys and prays the Court to sign, seal and make part of the record, its bill of exceptions taken during the trial of this cause, now for then—which is accordingly done.

25 *Bill of Exceptions.*

Filed April 3, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 49529.

THE CATHOLIC UNIVERSITY OF AMERICA
vs.

JOHN L. WAGGAMAN ET AL.

Be it remembered that this cause came on for trial on the 12th day of February, 1908, before Mr. Justice Wright and a jury.

Whereupon the following stipulation, made and entered into by counsel for the plaintiff, The Catholic University of America, and counsel for Alexander Porter Morse, Daniel B. Clarke Waggaman and the Union Trust Company, executors of the estate of Daniel B. Clarke, deceased, was offered in evidence.

"It is stipulated by and between counsel for the respective parties hereto that the sum total of moneys received by Thomas E. Waggaman from The Catholic University of America after the date of the bond sued on herein, to wit, October 26, 1899, was \$89,323.41; that the total amount of moneys paid over to the University after said date, October 26, 1899, was \$10,000.00.

2. It is further stipulated that of the total of \$876,168.96 of notes turned over by said Thomas E. Waggaman to the University, only

those amounting in face value to \$149,824.11 bear date on
26 or after October 26, 1899, and of this total amount of
\$149,824.11, \$79,223.41 represents moneys received by said
Waggaman from the University after the date of said bond, and
\$70,600.70 of the face amount of said notes represents moneys re-
ceived by said Waggaman from the University before the execution
of said bond.

There is no stipulation, however, with regard to the actual value of the notes aggregating the said sum of \$149,824.11.

3. It is further stipulated that Daniel B. Clarke died June 3, 1906; that Thomas E. Waggaman died June 27, 1906, and that Christine Waggaman is his administratrix."

Whereupon the plaintiff, to maintain the issues on its part joined, called as a witness IRVING WILLIAMSON, who testified as follows:

I have been a member of the Bar for nearly thirty years, and was Thomas E. Waggaman's attorney. I knew John Lenthall Waggaman, Daniel B. Clarke and C. S. Drury, and was familiar with their handwriting. Mr. Drury is now dead. The bond which you hand me was prepared, as shown by its date, about nine years ago. My best recollection is that I had the bond put in typewriting in Mr. Waggaman's office, and my impression is—that is all I can say about

it—that it was a reproduction of a form of bond, except as to date and sureties.

Counsel for the executors of Dr. Clarke, having admitted the signatures and execution of said bond and that said bond was duly delivered to and accepted by the University, the same was
27 offered in evidence and is as follows:

"Know all men by these presents that we, Thomas E. Waggaman, principal, and Daniel B. Clarke and John Lenthall Waggaman, sureties, all of the District of Columbia, are held and firmly bound unto the Catholic University of America, a corporation of said District, in the full and just sum of \$200,000, lawful money of the United States, to the payment of which sum unto said Catholic University, or its certain attorney, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 26th day of October, A. D. 1899.

The condition of the above obligation is such that if said Thomas E. Waggaman shall well and truly account for and pay over to said University, or the proper officer thereof, all sums of money collected or received by him for or on behalf of said University; and shall safely keep, account for and deliver up to said University, all notes or other evidences of indebtedness, belonging to said University, which shall be intrusted to him for safe keeping, or for any other purpose, then this obligation to be null and void, otherwise to be and remain in full force and virtue in law.

THOS. E. WAGGAMAN. [SEAL.]
JOHN LENTHALL WAGGAMAN. [SEAL.]
DANIEL B. CLARKE. [SEAL.]

Signed, sealed and delivered in the presence of:
C. S. DRURY."

28 On cross examination the witness said:

I do not know whether or not this bond was submitted by Thomas E. Waggaman to The Catholic University for examination previous to its execution.

Whereupon the plaintiff, to further maintain the issues on its part joined, called as a witness J. FENDALL CAIN, who testified as follows:

I am cashier of the Traders' National Bank, and also keep the books of the Catholic University, and have kept them since 1889. I kept an account of the dealings of the University with Thomas E. Waggaman, and that account runs from about 1888. I think the first money was turned over to him in 1888.

Whereupon the witness was asked the following question:

Q. I will ask you to look at this account and state how much money was turned over to Thomas E. Waggaman by the University or on its account from 1888 down to the time of the bankruptcy proceedings?

To which question counsel for the defendants objected. Counsel for the plaintiff stated that the object of the question was, and they offered to show that the sum of \$876,000 was turned over to Thomas E. Waggaman by the University or on its account from 1888 down to July 1904. That they desired to follow that up by showing what amount of money was paid back to the University by Thomas E. Waggaman during that period, and by showing the balance now due according to the books from Thomas E. Waggaman to the University.

29 But the court sustained the objection to the question and this offer of proof, to which ruling of the court plaintiff then and there excepted, and said exception was noted upon the minutes of the court.

Whereupon the witness was asked the following question:

Q. I will ask you to state to us the amount of money turned over to Thomas E. Waggaman by the Catholic University or on its account up to October 26, 1899.

To which question counsel for the defendants objected, and the objection was sustained, to which ruling of the court the plaintiff then and there excepted, and said exception was noted upon the minutes of the court.

Whereupon the witness further testified:

I have a list of the notes turned over to the University by Waggaman after the date of the bond sued on. The note of W. M. Sharkey, dated January 18, 1904, for \$10,965.41, is one of the notes turned over by Waggaman to the University after the date of the bond.

Counsel for plaintiff thereupon offered said note in evidence, it being stipulated by and between counsel that the maker of this note was one of the employés of Thomas E. Waggaman and that at the date of the execution of the note, and ever since, said maker has been financially irresponsible. Said note is in the words and figures following:

30 "Thomas E. Waggaman, Real Estate Broker and Auctioneer,
917 F Street, N. W., Washington, D. C.

\$10,965.41/100. WASHINGTON, D. C., *January 18th, 1904.*

On or before three years after date I promise to pay to the order of The Catholic University of America Ten Thousand Nine Hundred and Sixty-five and 41/100 dollars for value received, with interest, payable quarterly, at the rate of five per centum per annum until paid. Principal and interest payable at the office of Thos. E. Waggaman, Washington, D. C.

As collateral security for the payment of the above note there is deposited with said Thos. E. Waggaman certain notes, secured upon real estate, which notes are enumerated and described in a list, known as "List of Notes No. One," said list being also on file in the office of said Waggaman.

And in case this note, or any instalment of interest thereon, is not paid at maturity, said Waggaman has the authority, at maturity of this note, or at any time thereafter, in his discretion, without adver-

tisement or notice, to dispose of so much of said collateral as may be necessary, and apply the proceeds thereof to the payment of this note and interest, and the remainder of said proceeds, if any, to account for to such person as may be entitled thereto.

W. M. SHARKEY."

31 Endorsed on back:

"The principal of this note when due, and the interest as it matures, is guaranteed by Thos. E. Waggaman."

"Interest paid to April 18, 1904.

" " " July 18, 1904."

The WITNESS: The note of L. L. Nicholson, Jr., dated July 17, 1900, for \$23,283.00, is one of the notes turned over by Thomas E. Waggaman to the University after the date of the bond.

Counsel for plaintiff offered said note in evidence, it being stipulated between counsel that the maker of this note was one of the employés of Thomas E. Waggaman and at the date of the execution of said note, and ever since, has been financially irresponsible. Said note is in the words and figures following:

"Thomas E. Waggaman, Real Estate Broker and Auctioneer, 917 F Street, N. W., Washington, D. C.

\$23,283.00/100. WASHINGTON, D. C., *July 17th, 1900.*

On or before three years after date I promise to pay to the order of The Catholic University of America Twenty Three Thousand Two Hundred and Eighty-three and 00/100 dollars for value received, with interest, payable quarterly, at the rate of five per centum per annum until paid. Principal and interest payable at the office of Thos. E. Waggaman, Washington, D. C.

As collateral security for the payment of the above note, there is deposited with said Thos. E. Waggaman certain notes, 32 secured upon real estate, which notes are enumerated and described in a list, known as "List of Notes No. One," said list being also on file in the office of said Waggaman.

And in case this note, or any instalment of interest thereon is not paid at maturity, said Waggaman has the authority, at the maturity of this note, or at any time thereafter, in his discretion, without advertisement or notice, to dispose of so much of said collateral as may be necessary, and apply the proceeds thereof to the payment of this note and interest, and the remainder of said proceeds, if any, to account for to such person as may be entitled thereto.

L. L. NICHOLSON, JR."

Endorsed on back:

"The principal of this note when due, and the interest as it matures, is guaranteed by Thos. E. Waggaman."

"Int. paid to Oct. 17, 1900.
Jan. 17, 1901.
Apl. 17, 1901.
July 17, 1901.
Oct. 17, 1901.
Jan. 17, 1902.
Apl. 17, 1902.
July 17, 1902.
Oct. 17, 1902.
Jan. 17, 1903.
Apr. 17, 1903.
July 17, 1903."

Within note extended on or before three years to July 17,
33 1906.

Int. paid to Oct. 17, 1903.
Int. paid to Jany. 17, 1904.
" " April 17, 1904.
" " July 18, 1904."

"Filed 12 m. August 28, 1905. Andrew Y. Bradley, Referee."

The WITNESS: The note of Samuel E. Allen, Jr., dated August 6, 1901, for \$35,635.00, is one of the notes turned over by Thomas E. Waggaman to the University after the date of said bond.

Counsel for plaintiff offered said note in evidence, it being stipulated between counsel that the maker of this note was one of the employés of Thomas E. Waggaman, and at the date of the execution of said note, and ever since, has been financially irresponsible.

Said note is in the words and figures following:

"Thomas E. Waggaman, Real Estate Broker and Auctioneer, 917 F Street, N. W., Washington, D. C.

\$35,635.00/100. WASHINGTON, D. C., August 6th, 1901.

On or before three years after date I promise to pay to the order of The Catholic University of America Thirty-five Thousand Six Hundred and thirty-five—00/100 dollars for value received, with interest, payable quarterly, at the rate of five per centum per annum until paid. Principal and interest payable at the office of

Thos. E. Waggaman, Washington, D. C.

34 As collateral security for the payment of the above note there are deposited with said Thos. E. Waggaman certain notes, which are to remain in his custody, secured upon real estate, which notes are enumerated and described in a list, known as "List of Notes No. One," said list being also on file in the office of said Waggaman.

SAM'L E. ALLEN, JR."

Endorsed on back:

"The principal of this note, when due, and the interest as it matures, is guaranteed by T. E. Waggaman."

"Int. paid to Nov. 6, 1901.
Feb. 6, 1902.
May 6, 1902.
Aug. 6, 1902.
Nov. 6, 1902.
Feb. 6, 1903.
May 6, 1903.
Aug. 6, 1903.
Nov. 6, 1903.
Feb. 6, 1904.
May 6, 1904."

The WITNESS: The note of \$56,982.00, signed by C. M. Coughlin, dated January 18, 1901, is one of the notes turned over by Thomas E. Waggaman to the University after the date of the bond.

Counsel for plaintiff offered said note in evidence, it being stipulated between counsel that the maker of this note was one of the employés of Thomas E. Waggaman, and at the date of the
35 execution of the note, and ever since, has been financially irresponsible.

Said note is in the words and figures following:

"Thomas E. Waggaman, Real Estate Broker and Auctioneer, 917 F Street, N. W., Washington, D. C.

\$56,982.00/100. WASHINGTON, D. C., *January 18th, 1901.*

On or before three years after date I promise to pay to the order of The Catholic University of America Fifty Six Thousand Nine Hundred and Eighty-two—00/100 dollars for value received, with interest, payable quarterly, at the rate of five per centum per annum until paid. Principal and interest payable at the office of Thos. E. Waggaman, Washington, D. C.

As collateral security for the payment of the above note there is deposited with said Thos. E. Waggaman certain notes, secured upon real estate, which notes are enumerated and described in a list, known as "List of Notes No. One," said list being also on file in the office of said Waggaman.

And in case this note, or any instalment of interest thereon, is not paid at maturity, said Waggaman has the authority, at the maturity of this note, or at any time thereafter, in his discretion, without advertisement or notice, to dispose of so much of said collateral as may be necessary, and apply the proceeds thereof to the payment of this note and interest, and the remainder of said proceeds, if any, to account for to such persons as may be entitled thereto.

C. M. COUGHLIN."

36 (Revenue stamps appear on side of note.)
"Filed, 12 m. Aug. 28, 1905, Andrew Y. Bradley,
Referee."

Endorsed on back:

"The principal of this note when due, and the interest as it matures, is guaranteed by T. E. Waggaman."

"Int. paid to April 18, 1901.

July 18, 1901.
Oct. 18, 1901.
Jan. 18, 1902.
Apr. 18, 1902.
July 18, 1902.
Oct. 18, 1902.
Jan. 18, 1903.
Apr. 18, 1903.
July 18, 1903.
Oct. 18, 1903.
Jan. 18, 1904.

Within note extended for three years on or before from January 18, 1904, to January 18, 1907.

Int. paid to Apr. 18, 1904.

July 18, 1904."

The WITNESS: The note of W. M. Sharkey, dated January 6, 1900, for \$22,958.70/100 was one of the notes turned over by Thomas E. Waggaman to the University after the date of the bond.

Counsel for plaintiff offered this note in evidence, it being stipulated between counsel that the maker of this note was one of the employés of Thomas E. Waggaman, and at the date of the execution of the note, and ever since, has been financially irresponsible.

Said note is in the words and figures following:

"Thomas E. Waggaman, Real Estate Broker and Auctioneer, 917 F Street N. W., Washington, D. C.

\$22,958.70/100. WASHINGTON, D. C., *January 6, 1900.*

On or before three years after date I promise to pay to the order of The Catholic University of America, Twenty Two thousand Nine Hundred and Fifty eight—70/100 dollars for value received, with interest, payable quarterly, at the rate of five per centum per annum until paid. Principal and interest payable at the office of Thos. E. Waggaman, Washington, D. C.

As collateral security for the payment of the above note there is deposited with said Thos. E. Waggaman certain notes, secured upon real estate, which notes are enumerated and described in a list, known as "List of Notes No. One," said list being also on file in the office of said Waggaman.

And in case this note, or any instalment of interest thereon, is not paid at maturity, said Waggaman has the authority, at the maturity of this note, or at any time thereafter, in his discretion, without advertisement or notice, to dispose of so much of said collateral as may be necessary, and apply the proceeds thereof to the

payment of this note and interest, and the remainder of said proceeds, if any, to account for to such person as may be entitled thereto.

W. M. SHARKEY."

38 "Filed, 12 m. Aug. 28, 1905. Andrew Y. Bradley,
Referee."

Endorsed on back:

"The principal of this note when due, and the interest as it matures, is guaranteed by T. E. Waggaman."

"Int. paid to April 6, 1900.

July 6, 1900.
Oct. 6, 1900.
Jan. 6, 1901.
Apr. 6, 1901.
July 6, 1901.
Oct. 6, 1901.
Jan. 6, 1902.
Apr. 6, 1902.
July 6, 1902.
Oct. 6, 1902.
Jan. 6, 1903.

Within note extended for three years from Jan'y 6, 1903, to Jan'y 6, 1906, on or before.

Int. paid to April 6, 1903.

July 6, 1903.
Oct. 6, 1903.
Jan. 6, 1904.
Apr. 6, 1904.
July 6, 1904."

The WITNESS: I know of the value of list of notes No. 1 in Waggaman's office. I classified those notes. Some of them were secured by deeds of trust and a majority of them, probably 75%, were not secured at all. I do not know the appraised value of List No. 1. About \$76,000 approximately was paid back on account of the entire indebtedness of \$876,000. I have made up a statement of Mr. Waggaman's account from the beginning, and have the books now in court.

On cross examination witness said:

The five notes offered in evidence were signed by employés in Waggaman's office, whom I presume were irresponsible persons financially, but I don't know. These five notes were never in the possession of the University prior to March 10, or 12, 1904, but they have been in their possession, or under their control since that date. They were turned over to the University by Thomas E. Waggaman on the demand of the Rector. The University did not turn them back to Waggaman, or decline to receive them. I have been employed by the University since 1889, and am paid by them. There were two books, duplicates, one copy being kept by the University,

and one by Mr. Waggaman, that contained a list of all notes assigned to the University by Waggaman. These books were made up in Thomas E. Waggaman's office, one copy being held by him and the other turned over to the University.

On re-direct examination the witness was asked this question:

Q. Mr. Cain, are you familiar with the other notes of this bunch of 25 notes that were given by Mr. Waggaman?

But counsel for defendants objected to the question.

Whereupon counsel for plaintiff stated that he offered to show the value of said 25 notes; that for these notes aggregating \$876,000 various collateral notes were given to secure them, and that on these collateral notes the University has received about \$76,000. That plaintiff was entitled to show the entire transaction and statement of account, so that if there was to be an appropriation made by the court with regard to the payments of money which the University received, the court would have knowledge of the amount of the indebtedness and the sources from which said \$76,000 was received, on which the court would make an appropriation of said payments.

Whereupon counsel for the defendants stated:

"We claim no credit whatever upon these 5 notes, for anything that has been collected from the collateral notes securing these 5 notes, or securing any other anterior notes. There is nothing in the pleadings which raises the question of any such credit, and the appropriation of credit without some point raised in the pleadings would not be, I suppose, considered by your Honor as proper to be made in this case."

Mr. YERKES: With that admission in the case we will withdraw the question.

Thereupon counsel for plaintiff offered in evidence letters of administration granted on the estate of Daniel B. Clarke to the defendants, also the inventory and the first account filed by the executors, showing a net balance of personal estate on hand of \$127,573.98.

Whereupon plaintiff, to further maintain the issues on its part joined, called as a witness RICHARD T. ROBINSON, who 41 testified as follows:

I am employed by H. Rozier Dulany, Trustee in Bankruptcy of the estate of Thomas E. Waggaman. Mr. Dulany as trustee in bankruptcy took possession of a list of notes belonging to Thomas E. Waggaman, known as List of Notes No. 1, and he has collected on that list between \$1400 and \$1500. The face amount of List No. 1 is \$1203,990.77. Mr. Dulany has had possession of this list of notes since October or November, 1904, and he has only been able to collect \$1400 or \$1500 on that list.

On cross examination the witness said:

I am employed by Mr. Dulany as book-keeper and in a great measure I have come in personal direct contact with the debtors on the notes in List No. 1. I have not counted the number of notes in that list, but there are over a hundred notes in the bunch. I don't think they amount to as much as three or four hundred. I

have had charge of these notes, and it has been my duty to collect them. I am subject to Mr. Dulany's instructions in the matter. He has collected some interest on some of them and a portion of another note, that is, his attorneys collected a portion of one note. Mr. Dulany has immediate custody and possession of these notes. I think there are several hundred of them. I have never seen any paper showing that a number of notes contained in List No. 1 were taken out of that list and turned over to the University.

On re-direct examination the witness said:

The amount of the claims secured on List No. 1 and
42 proven before the referee in bankruptcy is \$1,239,668.02.

Whereupon the plaintiff, to further maintain the issues on its part joined, called as a witness GEORGE A. DOUGHERTY, who testified as follows:

I am secretary to the Rector and assistant treasurer of The Catholic University. I have seen the five notes which have been offered in evidence before. I received those notes from Thomas E. Waggaman about March 10, 1904. No money has been collected on these notes since I received them. Mr. Michael Jenkins, of Baltimore, is the treasurer of the University, and I act through Mr. Jenkins, and I have possession of the notes.

No cross examination.

This was all the evidence offered on behalf of the plaintiff.

And thereupon the defendants, to maintain the issue on their part joined, offered in evidence the Certificate of Incorporation of plaintiff dated November 12th, 1885, showing amongst the incorporators, and amongst the trustees for the first year, Thomas E. Waggaman, and showing, also, that the objects of the corporation were those of education, including theological instruction, and called as a witness DAVID M. KINDLEBERGER, who testified as follows:

I have been paying teller at Riggs National Bank for twenty four years. I know the signature of P. J. Garrigan. The letter of October 29th, addressed to Mr. Waggaman, is signed by Dr. Garri-

43 gan. Said letter is marked for identification "Garrison No. 1". The letter of February 26, 1903, addressed to Thomas E.

Waggaman is signed by Thomas J. Conaty, Rector. Said letter is marked for identification "Conaty No. 1."

Thereupon the witness was withdrawn from the stand.

Whereupon the defendants, to further maintain the issues on their part joined, called as a witness CECILIA M. COUGHLIN, who testified as follows:

I knew Thomas E. Waggaman, and was his stenographer and typewriter from 1887 down to the date of his failure. The books that he kept in his office were rent account books and interest account books, also cash book, day book and a letter book. He sent accounts to the University but I can't say how frequently. He might have sent them every day or once a week, or once a month. When he paid them interest or when he made an investment for

them, we would send them an account. When he received money from the University he sent them a statement. Usually this statement was sent as soon as the money was received, but I cannot say positively, as I did not make out those statements. Mrs. Waggaman and Miss Phillips attended to that. I have seen such accounts though, and they were made out on Mr. Waggaman's office heading. His office paper had as a heading "Thomas E. Waggaman, Real Estate Broker and Auctioneer" and as well as I can remember these accounts would state that they were in account with the Catholic University. The statement sent to the University usually would

44 read "Thomas E. Waggaman, Real Estate Broker and Auctioneer, 917 F Street, N. W., in account with Thomas E. Waggaman, Treasurer of The Catholic University of America."

No cross examination.

Whereupon the defendants, to further maintain the issues on their part joined, called as a witness IRVING WILLIAMSON, who testified as follows:

I have been a member of the Bar for nearly thirty years, and reside in this city. I have known Mr. George E. Hamilton since he came to the Bar. He is a lawyer. I understood that in 1904 he was acting as counsel for The Catholic University. I do not know if he was acting as counsel for the University in April 1904, but I had a talk with him later. My recollection is that I saw him and dealt with him as counsel for the University in June 1904. At that time I was counsel for Thomas E. Waggaman.

No cross examination.

It was admitted by counsel for the plaintiff, that George E. Hamilton became counsel for the plaintiff about the middle of May, 1904.

Whereupon the defendants, to further maintain the issues on their part joined, called as a witness GEORGE A. DOUGHERTY, who testified as follows:

I have had communications with Mr. Michael Jenkins, the treasurer of the University, and know his signature. The letter dated May 23, 1904, and addressed to Thomas E. Waggaman is signed by Mr. Jenkins. Said letter is marked for identification
45 "Jenkins No. 1." The seal attached to the agreement of July 13, 1904, between Thomas E. Waggaman and The Catholic University of America is the seal of The Catholic University, and I recognize my signature to said instrument as acting secretary and custodian of said seal. Said agreement is marked for identification "Dougherty No. 1."

Whereupon the defendants, to further maintain the issues on their part joined, recalled DAVID M. KINDLEBERGER, who testified as follows:

I know the signature of Charles J. Bonaparte attached to the paper dated May 23, 1904, and addressed to Thomas E. Waggaman. Said paper is marked for identification "Bonaparte No. 1." I recognize the signature of James Cardinal Gibbons, Archbishop of Balti-

more, attached to the agreement of July 13, 1904, between Thomas E. Waggaman and The Catholic University of America. I also identify the signature of George A. Dougherty, acting secretary and custodian of the seal of said University. The signature to the letters addressed to Thomas E. Waggaman dated May 25, 1904, June 4, 1904, June 19, 1904, June 27, 1904, June 30, 1904, July 2, 1904, are all signatures of George E. Hamilton. Said letters are marked for identification "Hamilton No. 1."

Thereupon the defendants, to further maintain the issues on their part joined, called as a witness, H. ROZIER DULANY, who testified as follows:

46 I qualified as trustee in bankruptcy of the estate of Thomas E. Waggaman in December, 1904, and his papers, books and correspondence came into my possession as far as I know. I recall a letter addressed by George E. Hamilton to Thomas E. Waggaman, enclosing a letter from Messrs. Jenkins and Bonaparte, which latter letter also enclosed a form of bond. The letter of April 25, 1904, purports to be from George E. Hamilton to Thomas E. Waggaman. I am afraid I could not say that that was the letter which was accompanied by a proposed form of bond. I remember distinctly that there was a bond and a letter enclosed, but I could not say whether that was the letter. I had them attached together, and it seems that they have been separated, and I would not like to say that I could identify it from that.

No cross examination.

Thereupon the defendants, to further maintain the issues on their part joined, called as a witness CLEMENTINE WAGGAMAN, who testified as follows:

I reside in this city, and was employed by Thomas E. Waggaman between twenty five and thirty years. I was in his employ from 1889 to the date of his failure, as a note clerk. I know the twenty five notes which he guaranteed to the University. In the spring of 1904 they were delivered to the University. I gave them to Father Dougherty, and Mr. Cain. I am familiar with the forms of accounts which Waggaman used to render to the University. They were written on a bill-head, the printed form of Thomas E. Waggaman as real estate broker and auctioneer, in account with—and written by myself when the accounts were made up—Thomas

47 E. Waggaman as treasurer of The Catholic University of America. When he received any money from the University for investment, a receipt was given for it, and it was held by him until an investment was made. We would send a statement to the University when an investment was made. I don't know how often or how many times a year that was done. The dates of the notes show when investments were made.

Counsel for defendants thereupon called for the production by counsel for plaintiff of the accounts of Thomas E. Waggaman dated February 26, 1903, and January 18, 1904, and the counsel for plaintiff produced said accounts.

The WITNESS: The account of February 26, 1903, is in my handwriting.

Counsel for defendants thereupon offered said account in evidence, which is in the words and figures following:

"WASHINGTON, D. C., Feb'y 26, 1903.

Thomas E. Waggaman, Real Estate Broker and Auctioneer, No. 917 F Street, N. W., in account with Thomas E. Waggaman, Treas. The Catholic University of America.

N. B.—Please report any errors which may occur in your account as soon as discovered.

Check rec'd for investment.....	\$200
Towards endowment Abp. Kenrick Chair.....	\$100
" " " Williams ".....	100
	<hr/>
	\$200
Held for investment.....	200
	<hr/>
	\$200"

48 Counsel for defendants also offered in evidence account of January 18, 1904, produced by the plaintiff under notice, purporting to be an account of Thomas E. Waggaman with The Catholic University, said account being in the words and figures following:

"WASHINGTON, D. C., January 18, 1904.

Thomas E. Waggaman, Real Estate Broker and Auctioneer, No. 917 F Street N. W., in Account with Thomas E. Waggaman, Treas. the Catholic University of America.

N. B.—Please report any errors which may occur in your account as soon as discovered.

1902.

Sept. 25	Am't received for investment	\$9,665.41
	Interest at 5% from Sept. 25/02 to Jan'y 18/04	636.29
Nov. 1	Amount received for investment (Proceeds of \$1,000 bequest of Mrs. Mary Dries towards endowment German Chair)	950.00
	Interest at 5% from Nov. 1/02 to Jan. 18/04..	57.79
" 29	Held for investment (on account of Abp. Ken- rick Chair).....	150.00
	Int. from Nov. 29/02 to Jan. 18/04.....	8.53

1903.

Feb. 26	Amt. received for reinvestment.....	\$100
	Towards endowment of Abp. Kenrick Chair 100	200.00
	" " " Williams "	
	Int. on \$200 from Feby. 26/03 to Jany. 18/04..	8.97

49

1904

Jany. 18	Loan to W. M. Sharkey, on or before three years secured by Real Estate notes, interest payable quarterly at 5%.....	10,965.41
	Balance per check for interest to The Catholic University of America.....	711.58

\$11,676.99 \$11,676.99

The note in above transaction is held at office for collection of interest and principal.

THOMAS E. WAGGAMAN."

The WITNESS: This account is in my handwriting. The item in that account under date of February 26th, the amount received for investment \$100, towards endowment of Archbishop Kenrick Chair, and towards the endowment of Archbishop Williams Chair, \$100—\$200—are the same items that are found in the account of February 26, 1903. To the best of my knowledge that \$200 was the last money received by Thomas E. Waggaman from the University.

On cross examination the witness said:

I was familiar with all sums of money that passed to Mr. Waggaman from the University for investment. I knew about all sums of money that came to him from the University for investment because I made out the investment accounts. I made out the accounts when Mr. Waggaman notified me that he had received any money. If he received money from the University and failed to notify me to make out an account, I would know nothing about it. I simply did what he directed or dictated to me, and the entries in these accounts were made by his personal direction.

Thereupon the defendants, to further maintain the issues
50 on their part joined, called as a witness SAMUEL MADDOX,
who testified as follows:

I am a member of the Bar and have been counsel for the trustee in bankruptcy since his appointment. I have had charge of the litigation commenced by him in respect of the deed of trust on Woodley Park, and in that connection had occasion to examine the letters purporting to be from George E. Hamilton to Thomas E. Waggaman. I have seen the letter of May 25, 1904, from Mr. Hamilton to Mr. Waggaman, a great many times. I have examined a great many times the letter dated May 23, 1904, addressed to Waggaman and purporting to be signed by Michael Jenkins and Charles J. Bonaparte, sub-committee, and the form of bond attached thereto.

Counsel for defendants offered in evidence said letter of May 25, 1904. Thereupon counsel for plaintiff objected — said offer on the ground that it was not evidential of any issue in this case, but the objection was overruled, to which ruling of the court the plaintiff then and there excepted, and said exception was noted upon the minutes of the court. Said letter was thereupon offered in evidence, and is in the words and figures following:

George E. Hamilton. Michael J. Colbert. John J. Hamilton.
Leo P. Harlow.

"Hamilton & Colbert, Attorneys and Counselors at Law, Century Building, 412 5th St.

WASHINGTON, D. C., May 25, 1904.

Thomas E. Waggaman, Esq.

DEAR SIR: At the request of Messrs. Bonaparte and
51 Jenkins, I transmit the attached.

Should you desire to reply through Mr. Williamson, as
intimated to-day, Mr. Williamson can take the matter up with me.

Yours very truly,
(Signed) GEORGE E. HAMILTON."

The following notes appear in ink on the above:

"Ex. Dulany No. 18a."

"For identification, Hamilton No. 1."

Mr. Williamson was Mr. Waggaman's lawyer at the time that letter was written, in fact I know that he used to go to Mr. Waggaman's office every day.

WITNESS: I am inclined to think I saw these letters in the early part of 1905, about the time I was preparing the bill for the administration of the Woodley Park property. I could not say if these papers were ever examined by anyone else after they left Mr. Waggaman's hands, and before they came to me. I received them from Mr. Dulany as his attorney.

The witness was thereupon asked the following question:

Q. The question I ask you is whether, when they came into your hands, and you examined them, there was anything to indicate that they had been examined by anyone else since they came from Mr. Waggaman's hands, and whether they had been disarranged in their order.

To which question counsel for plaintiff objected, but the objection was overruled, to which ruling of the court the plaintiff then
52 and there excepted, and said exception was noted upon the minutes of the court.

The WITNESS: I cannot say about that. All I can say is what their status was when I first saw them at the time they were brought to me. My recollection is that I first saw these letters in Mr. Dulany's office, and that this short letter by Mr. Hamilton, with a copy of an unsigned bond and a letter from the Committee of a few days earlier date, were attached to it by a temporary fastener. I am pretty sure that I removed that temporary fastener, and pasted the draft of the bond upon the Committee's letter so that they would be together. The papers which you hand me are the papers which I have just referred to.

Counsel for the defendants then offered the letter of Messrs. Jenkins and Bonaparte and the bond referred to by witness in evidence, to which offer the plaintiff objected and the objection was overruled, to which ruling of the court the plaintiff then and there excepted, and said exception was noted upon the minutes of the

court. The said letter and said bond were in the words and figures following:

"MAY 23RD, 1904.

Thomas E. Waggaman, Esq., Treasurer Catholic University of America.

DEAR SIR: As stated to you at our conference on Friday, the Trustees of the Catholic University, advised by a report made by the undersigned Sub-Committee of the condition of investments

made by you of the funds of the University, are convinced
53 that, by reason of insufficient security and the methods of your investment, the situation is one which compels them, in the performance of their duty as Trustees, to require additional security for the funds placed in your hands for investment.

Acting for the Trustees, and by their direction, we endeavored to place fully before you at the meeting referred to, conditions disclosed to us by this investigation, and to obtain your coöperation in giving the University additional and sufficient security, and thereby avoiding the evident dangers that at present surround the situation.

As understood between us, we now submit the outline of an arrangement, which, under the circumstances and in view of the discussion had on Friday, contains the substance of what we think you should be willing to give, and the equivalent of which is the least, in our judgment, that the Trustees, in the discharge of their plain duty, must insist upon receiving.

1st. In lieu of the bond executed by yourself as principal and Daniel F. Clarke and J. Lenthall Waggaman, as sureties, on the 26th day of October, 1899, in the penal sum of Two Hundred Thousand Dollars, that a bond in form of the draft hereto attached shall be executed and delivered by yourself, Daniel F. Clarke, and J. Lenthall Waggaman, as soon as Dr. Clarke's health will permit.

While confident that the full protection, intended, as you assured us, to be conferred by the existing bond, would not be denied or even questioned by any of the parties thereon, if living, we are of

54 opinion that the condition is not sufficiently explicit to prevent, in the event of the death of any of the parties, possible objection on technical grounds, and this, of course, should be avoided as a matter of justice to the University and of credit to you as its officer.

2nd. That you will give to the University a trust upon your right, title and interest in Woodley Park, Wesley Heights, Meridian Hill and Cleveland Park, to secure all the funds of the University placed in your hands for investment, the trust to be satisfactory in form to the counsel of the University, Mr. George E. Hamilton, but so drawn as to enable you, by making a proportionate payment on your indebtedness to the University, to obtain a release of any lots or parts of said land sold by you during the continuance of this trust.

3rd. That you will arrange to have such of the securities included under the description of "List of notes numbered One," as were handed over at different times to the Rector of the University, so endorsed as to make them negotiable and enforceable by the Uni-

versity, and at the same time that you will give to the University an abstract of title to all properties upon which the notes included in the said list are secured.

4th. The funds of the Catholic University, in amount \$876,168.96, shall be paid back to the University in full, three years from this date, and the amount of your indebtedness reduced by at least one-fourth during one year, and by at least one-half during two years, from the present time. Interest to be paid monthly, as heretofore.

We have made no reference to the Art Gallery, as it was
55 understood that you will give forthwith to the Rector a full

list of all the contents of the said Gallery, or a catalogue of the same, with an endorsement by you, prepared by Mr. Hamilton, making the same a schedule to be attached to the Bill of Sale given by you, and now on record and by said endorsement confirmed.

In conclusion we desire to assure you that, while feeling ourselves charged with the imperative duty of obtaining without delay additional and adequate security for the funds of the University, we earnestly desire to accomplish this end through an amicable arrangement, which will give full protection to the University, but will cause the least possible detriment to yourself.

We remain, sir, yours very respectfully, and truly,

(Signed)

MICHAEL JENKINS,
CHARLES J. BONAPARTE,
Sub-Committee."

"Know all men by these presents, That we, Thomas E. Wagga-
man, Principal, and Daniel B. Clarke, and John Lenthall Wagga-
man, sureties, all of the District of Columbia, are held and firmly
bound unto the Catholic University of America, a corporation, of
said District, in the full and just sum of Two Hundred Thousand
Dollars (\$200,000.00), lawful money of the United States, to the
payment of which sum unto said Catholic University, or its certain
attorney, well and truly to be made, we bind ourselves, and each of
us, our and each of our heirs, executors and administrators, jointly
and severally, firmly by these presents.

Sealed with our seals and dated this —— day of May,
56 A. D. 1904.

The condition of the above obligation is such that if the
said Thomas E. Wagggaman shall well and truly account for, and
pay over in cash to the said University, or the proper officer thereof,
when called upon so to do, all sums of money at any time placed
in his hands for investment, or otherwise, and all sums of money
collected or received by him from, for or on behalf of said Univer-
sity, then this obligation to be null and void, otherwise to be and
remain in full force and virtue in law.

_____. [SEAL.]
_____. [SEAL.]
_____. [SEAL.]

Signed, sealed and delivered in the presence of:

_____."

Counsel for the defendants thereupon offered in evidence the certain letters next hereinafter at large given to which offer counsel for plaintiff objected on the ground that said letters were irrelevant, immaterial and not evidential of any issue in this case, but said objection was overruled, to which ruling of the court the plaintiff then and there excepted, and said exception was noted upon the minutes of the court, the first of said letters being in the words and figures following:

(Letter head, Hamilton & Colbert.)

JUNE 4, 1904.

Mr. Thomas E. Waggaman.

DEAR SIR: I am requested by Mr. Bonaparte to call your
57 attention to the fact that no reply has been made to the letter
of himself and Mr. Jenkins, forwarded to you by me on the
25th day of May, and to request that you will give attention to the
same.

Yours very truly,
(Signed) GEORGE E. HAMILTON."

Counsel for defendants thereupon offered in evidence letter of June 18, 1904, from George E. Hamilton to Thomas E. Waggaman, to which offer plaintiff's counsel objected, for the same reasons, but said objection was overruled, to which ruling of the court the plaintiff then and there excepted, and said exception was noted upon the minutes of the court. Said letter is in the words and figures following:

(Letter head, Hamilton & Colbert.)

JUNE 18, 1904.

Mr. Thomas E. Waggaman.

DEAR SIR: I must again call your attention to the fact that the letter of Messrs. Bonaparte and Jenkins, Committee, forwarded to you by me on May 25th, and again brought to your attention in my note of June 4th, still remains unanswered.

Because of your long delay in making reply to this communication, and because also of the information obtained from the public records that you are apparently conveying away and still
58 further encumbering your interest in Woodley, I am directed by the Committee to inform you that unless additional security for the funds of the University, deposited with you for investment, is forthwith given substantially as called for in said letter, the very disagreeable necessity of immediate action to protect the interests of the University, and to recover the monies so deposited, will be forced upon the Committee.

Yours very truly,
(Signed) GEORGE E. HAMILTON."

Counsel for the defendants then offered in evidence letter of June 27, 1904, from George E. Hamilton to Thomas E. Waggaman, to which offer the plaintiff objected for the same reasons, but the objection was overruled, to which ruling of the court the plaintiff then and there excepted, and said exception was noted upon the minutes of the court. Said letter is in the words and figures following:

(Letter head, Hamilton & Colbert.)

JUNE 27, 1904.

Mr. Thomas E. Waggaman.

DEAR SIR: Your letter of the 21st instant, in which you express your inability to conclude in your own mind what to do about the Committee's letter of the 23rd of May, and state that you will, after July 15, come to see me personally and talk over the matter, was duly received, and has been considered by myself and the Committee.

I am directed by the Committee to inform you that it is altogether impossible, under existing conditions, to consent to the suggested delay, and that in the opinion of the Committee such delay is both unnecessary and unreasonable.

59 In the Committee's letter of May 23rd, the first provision of the arrangement insisted upon was that "In lieu of the bond executed by yourself as principal, and Daniel F. Clarke and J. Lenthall Waggaman, as sureties, on the 26th day of October, 1899, in the penal sum of Two Hundred Thousand Dollars, that a bond in form of the draft hereto attached shall be executed and delivered by yourself, Daniel F. Clarke and J. Lenthall Waggaman, as soon as Dr. Clarke's health will permit," and the Committee understood at their interview with you that this bond would be given on the return of Dr. Clarke from Atlantic City.

Again, in the third provision of said agreement the Committee insisted that you would arrange "to have such of the securities included under the description of 'List of notes numbered One,' as were handed over at different times to the Rector of the University, so endorsed as to make them negotiable and enforceable by the University, and at the same time that you will give to the University an abstract of title of all properties upon which the notes included in the said list are secured."

If the demands contained in the two foregoing provisions were complied with, the Committee might be made inclined to wait, as suggested in your letter of the 21st instant, but, in view of non-action, even with regard to the bond and collateral notes, which could not, we submit require very much time for consideration by you, and because of the conditions which affect the University fund, it is impossible to acquiesce in the further delay until July 15th, and I am, therefore, compelled to state that unless relieved by immediate action on your part I must pursue at once the course indicated in my letter of the 18th instant.

Yours very truly,
(Signed)

GEORGE E. HAMILTON."

60 Counsel for defendants then offered in evidence letters of June 30, 1904, from George E. Hamilton to Thomas E. Waggaman, and July 2, 1904, from George E. Hamilton to Thomas E. Waggaman, to which offer plaintiff's counsel objected for the same reasons, but the objection was overruled to which ruling of the court the plaintiff then and there excepted as to the offer of both letters and said exception was noted upon the minutes of the court. Said letters are in the words and figures following:

(Letter head, Hamilton & Colbert.)

JUNE 30, 1904.

Mr. Thomas E. Waggaman.

DEAR SIR: Your letter of the 29th instant received. While it may be that the Committee is without discretionary power to accept the proposition submitted in your letter just referred to, I desire, before presenting the same for consideration, to obtain some further information regarding the suggested arrangement.

Am I to understand that the trust proposed to be given on the unsubdivided portion of Woodley, containing, as stated, 1,500,000 feet, is to be made by the Trustees and yourself, or by whom?

Will the trustees and the holders of the legal title whomever they may be, join in your agreement not to transfer or further encumber the property during the ninety days?

Will, at the time of the giving of this trust, the bond about which we have written, be given by yourself, Dr. Clarke and John Lenthall Waggaman, for \$200,000.00, and the notes included in "List of notes numbered One," be endorsed as suggested in former communications?

61 Please let me have a reply to this to-day, in order that I may immediately confer with the Committee.

Yours very truly,
(Signed)

GEORGE E. HAMILTON.

Please also indicate the location of the unsubdivided portion of Woodley.

GEORGE E. HAMILTON."

(Letter head, Hamilton & Colbert.)

JULY 2, 1904.

Mr. Thomas E. Waggaman.

DEAR SIR: Your letters of June 29th and 30th, with plat indicating the unsubdivided portion of Woodley, have been duly considered.

The proposition made therein does not in any reasonable way meet the demands of the University as conveyed to you by the Committee in their letter of May 23rd, and reiterated in subsequent communications.

The unsubdivided portion of Woodley, indicated upon the plat referred to is the least valuable part by far of Woodley, and is in large part very much below grade, broken and difficult of handling.

In any subdivision of this portion an allowance for streets of at least one-third must be made, and this would reduce the area to one million feet. Careful and well informed real estate men value this land when subdivided,—that is allowing for the streets, at twenty-five (25) cents per foot. The value, therefore, of the property offered by you, according to our advices, is \$250,000.00: on this there is an existing trust of \$125,000.00, leaving the equity in this property worth \$125,000.00. You ask the Committee to take a trust on this property and to keep it from record for ninety days, in satisfaction of their demand for additional security on an indebtedness of almost \$900,000.00, and this, as above stated, does not meet in any substantial way the exigencies of the situation, especially as it is coupled with a practical refusal on your part to give the bond, as positively stated to the Committee you would do without delay.

Unless, therefore, I receive before Thursday, the seventh of July, a more satisfactory reply to the Committee's letter of May 23rd, I will, without further notice, act as indicated in my letter of the 18th ultimo.

Yours very truly,
 (Signed) GEORGE E. HAMILTON,
Attorney for the Catholic University of America."

Counsel for defendants then offered in evidence agreement of July 13, 1904, between Thomas E. Waggaman and The Catholic University of America, to which offer the plaintiff then and there excepted on the ground that said agreement was irrelevant and immaterial and not evidential of any issue raised in the case, because there was no evidence to show that the University had ever delivered any of the notes mentioned in said agreement to Waggaman for safe keeping, and because the paper itself showed that the notes therein referred to represent moneys delivered by the University to him, and by him actually loaned to himself, and that he took these notes without the knowledge or consent, or procurement of the University, and that the University did not know that he had loaned its money to himself, and taken said notes, until March, 1904, but said objection was overruled by the court, to which ruling of the court the plaintiff then and there excepted, and said exception was noted upon 63 the minutes of the court. Said agreement is in the words and figures following:

Memorandum of agreement made and entered into this thirteenth day of July, A. D. 1904, by and between Thomas E. Waggaman, of the City of Washington, District of Columbia, party of the first part, and the Catholic University of America, a corporation duly incorporated and having its location in the District of Columbia, party of the second part.

Whereas, from time to time since 1892 money in various sums, and of the total aggregate of Eight Hundred and Seventy-six Thousand, One Hundred and Sixty-eight Dollars and Ninety-six cents

(\$876,168.96), hereinafter referred to as the "University Fund," was turned over by the party of the second part, and received by the party of the first part, for investment,

And whereas, from the report of the Committee recently appointed by the party of the second part to investigate the investment of said "University Fund," and its condition, the said party of the second part is advised and informed that the said party of the first part has loaned the said "Fund" to himself, giving, or causing to be given, as security therefor, certain promissory notes, made and executed by employees in his office, made payable, or endorsed, to the Catholic University of America, hereinafter referred to as "Principal notes," the payment of which is guaranteed by the party of the first part, and also secured on certain other or collateral notes, described as "Real Estate notes, known as List of Notes numbered One," the said principal notes being as follows:

Notes Already Due.

Three notes of C. M. Coughlin, dated November 10, 1892, payable three years after date, extended 64 to Nov. 10, 1902, one for thirty thousand and two for five thousand dollars each.....	\$40,000.00
Note of E. T. Keller, dated Nov. 24, 1893, payable on or before July 10, 1895, order of Samuel E. Allen, Jr., extended to Nov. 24, 1903.....	40,000.00
	<hr/>
	\$80,000.00

*Notes to Become Due After the Execution of the Agreement and
Before January 1, 1905.*

Note made by J. B. Nicholson, dated Oct. 31, 1892, payable on or before one year to the order of S. E. Allen, Jr., extended to Oct. 31, 1904.....	22,423.40
Note made by J. B. Nicholson, dated Dec. 21, 1892, payable on or before one year to the order of C. M. Coughlin, extended to Sep. 21, 1904.....	14,101.00
Note made by M. F. Riley, dated Sep. 23, 1895, pay- able on or before three years to the order of C. M. Coughlin, extended to Sep. 23, 1904.....	20,762.19
Note made by W. S. McLeod, dated Nov. 14, 1895, payable on or before two years to E. S. Allen, Jr., extended to August 14, 1904.....	2,500.00
Note made by S. E. Allen, Jr., dated Aug. 6, 1901, payable on or before three years, to the Catholic University of America, due August 6, 1904.....	35,635.00
Note made by R. L. Phillips, dated March 25, 1896, payable two years after date to the order of Samuel E. Allen, Jr., extended to Sep. 25, 1904.....	15,058.24

65	Note of Charles S. Drury, dated Sep. 6, 1898, payable on or before three years to the Catholic University of America, extended to Sep. 6, 1904	19,556.85
	Note of M. F. Riley, dated March 7, 1898, payable on or before three years to the Catholic University of America, extended to Sep. 7, 1904.....	54,000.00

		\$184,036.68
	Amount brought forward	\$184,036.68
	Note of W. S. McLeod, dated Nov. 3, 1894, payable on or before three years, order of S. E. Allen, Jr., extended to Aug. 3, 1904.....	41,135.71

		\$225,170.39

Notes Becoming Due After January 1, 1905.

66	Note of William M. Hodges, dated Jan. 13, 1893, pay- able on or before two years order of S. E. Allen, Jr., extended to January 13, 1905.....	30,879.00
	Note of W. S. McLeod, dated June 1, 1895, payable on or before three years, order of Catholic Univer- sity of America, extended to Sept. 1, 1905.....	60,600.00
	Note of W. M. Sharkey, dated Jan. 18, 1904, payable on or before three years to the order of the Catholic University of America, extended to May 18, 1905..	10,965.41
	Note of M. G. Soleau, dated May 18, 1896, pay- able on or before three years to the order of the Catholic University of America, extended to May 18, 1905.....	16,935.95
	Note of L. L. Nicholson, Jr., dated July 17, 1900, pay- able on or before three years to the order of the Catholic University of America, extended to July 17, 1906	23,283.00
	Note of W. S. McLeod, dated Jan. 23, 1895, payable on or before two years to the order of T. E. Wagaman, extended to Jan. 23, 1907.....	50,000.00
	Note of A. C. Yonson, dated July 8, 1896, payable on or before one year, to the order of the Catholic Uni- versity of America, extended to July 8, 1906.....	48,500.00
	Note of A. C. Yonson, dated Apr. 25, 1896, payable on or before three years, to the order of T. E. Wagga- man, extended to Apr. 25, 1905.....	46,894.51

		\$288,057.87
	Amount brought forward.....	\$288,057.87

Note of Louis D. Keller, dated Oct. 22, 1896, payable on or before three years to order of the Catholic University of America, extended to Oct. 22, 1906.....	50,000.00
Note of S. E. Allen, Jr., dated June 5, 1897, payable on or before three years to the order of the Catholic University of America, extended to June 6, 1906.....	153,000.00
Note of C. M. Coughlin, dated Jan. 18, 1901, 67 payable on or before three years to order of Catholic University of America, extended to January 18, 1907.....	56,982.00
Note of W. M. Sharkey, dated Jan. 6, 1900, payable on or before three years, to order of Catholic University of America, extended to Jan. 6, 1906.....	22,958.70
	<hr/>
	\$570,998.57
	<hr/>

And whereas, the only other security for the payment of said "University Fund," is a bond in the penal sum of Two Hundred Thousand Dollars (\$200,000.00), executed on the 26th day of October, 1899, by Thomas E. Waggaman, as principal, and Daniel B. Clarke and John Lenthall Waggaman, as sureties, and an Instrument in writing, or Bill of Sale, dated the 22nd day of November, 1901, and recorded October 28, 1903, in Liber 2761, folio 265, from the party of the first part and Christine Waggaman, his wife, to the party of the second part, conveying to the said party of the second part the paintings, pictures, curios, bronzes and objects and articles of every kind contained in the Gallery of said party of the first part, located as an annex to his residence numbered 3300 O Street, Northwest, Washington, D. C., and more particularly described in a Catalogue in two parts, signed by said party of the first part and given to said party of the second part, as a schedule to said Indenture of November 22, 1901,

And whereas, the said party of the second part, advised as aforesaid by the report of its Committee, is not satisfied with the form and manner of the investment of its monies deposited with said Waggaman for investment, as above set forth, and is not satisfied with the security or securities given by said party of the first part, or obtained by him for and as security for said sum or funds, and has demanded of said party of the first part additional security for

68 said sum or funds, and a definite arrangement as to the payment of said funds to the party of the second part, and

whereas, said party of the first part is willing to arrange for said payment and to give additional security,

Now, therefore, this agreement witnesseth, that the parties hereto, in consideration of the sum of One Dollar, lawful money of the United States, each to the other in hand paid, the receipt of which is hereby acknowledged, and each in consideration of the mutual covenants and agreements of the other, do hereby covenant and agree to and with each other as follows:

First. That the said "University Fund," represented by said "Principal Notes," shall be paid as follows:

a. The principal notes already due, being two in number, and aggregating in amount the sum of \$80,000.00, to be paid on or before the fifteenth day of October, 1904,

b. The principal notes becoming due and payable after the date of this Agreement, and before January 1, 1905, being nine in number, and aggregating in amount the sum of \$225,170.39, to be paid on or before the First day of January, 1905, and

c. The balance of said principal notes, being twelve in number, and aggregating in amount the sum of \$570,988.57, to be paid on or before the date of their respective maturity, and as they fall due, the interest on the entire "University Fund," represented by said notes to be paid, as heretofore, in monthly instalments.

Second. As further security for the payment of said "University Fund," additional to the security already given, and not in substitution thereof, the said party of the first part will give, or secure to be given, forthwith by Thomas E. Waggaman, and John

69 Ridout, Trustees, a deed of trust on all of the unsold portion of that subdivision, whether actually subdivided or not, in the District of Columbia, known as "Woodley Park," containing about 3,121,493 square feet, more or less, a plat whereof is hereto annexed, whereon is indicated the lots or parts sold, all of the rest of said subdivision, whether free from existing encumbrances or encumbered by prior trust, to be included in the deed of trust to be given as above provided, the said deed of trust to be executed and delivered by said Thomas E. Waggaman and John Ridout, Trustees, on written authority of the parties owning or interested in said subdivision under the deed of trust to said Waggaman and Ridout, it being understood and agreed by the parties hereto that the said deed of trust will not be recorded for ninety (90) days after the date of this Agreement, unless under conditions and for reasons hereinafter specified, and it is further understood and agreed that if by reason of the absence of any of the parties owning or interested in said property under said deed in trust, the necessary authority for the execution of the deed of trust herein provided for can not be obtained at the time of the execution of the said paper, then, and in that event, the said authority shall be procured by said party of the first part within forty (40) days from the date of this Agreement.

Third. It is further understood and agreed that the said deed of trust to be given on "Woodley Park" shall provide for the consent of the party of the second part to the release of any part of said "Woodley Park," upon the payment by the said party of the first part on said indebtedness of an amount in proportion to the value of the ground released, and shall also contain a provision for the sale of the entire property to be included as aforesaid in the deed of trust,

70 upon the failure of Thomas E. Waggaman to pay any of the said principal notes as herein provided, or the interest thereon; at the times and according to the manner stated in this Agreement.

Fourth. It is further understood and agreed that the authority

for the giving of said deed of trust and the form and provisions thereof, shall be satisfactory to George E. Hamilton, attorney for the Catholic University, and that the Trustees named in said trust shall be George E. Hamilton and Irving Williamson.

Fifth. It is further agreed that at the time of the execution of this agreement Thomas E. Waggaman and John Ridout, Trustees under the deed in trust of Woodley Park, and the holders of the legal title thereto, shall agree in writing with the party of the second part, that no sale of any part of said "Woodley Park" shall be made, and no encumbrance placed thereon during the ninety days that the said deed of trust is, by this Agreement, to be withheld from record, that the title and condition of said "Woodley Park" shall remain during said period, unless otherwise directed or permitted by the said party of the second part, as it is at the date of the execution of this Agreement.

Sixth. It is agreed between the parties that the contents of the Waggaman Gallery, according to the Catalogue or Schedule heretofore given by said party of the first part to the said party of the second part, shall be placed with _____, of New York City, not later than January, 1905, for the sale of said Gallery, to be so placed in the name of the University, and the proceeds therefrom to be paid over to the University and credited on account of said "University Fund," due from the said party of the first part to the said party of the second part, as hereinbefore set forth.

71 Seventh. That the said party of the first part will, within forty (40) days from the date of this Agreement, procure that John F. Waggaman, the maker of twenty-two demand notes included in the list of collateral notes herein referred to as list of Notes numbered One, above referred to, by a proper endorsement, guarantee the payment of said notes, and further that if any endorsement by the makers or endorsers of any other of said notes included in "List of Notes numbered One" is needed to validate the same, because of the postponement under this Agreement granted in the payment of the "Principal Notes," such endorsement shall be obtained by the said party of the first part if it is practicable for him so to do, and that the said party of the first part will use his best efforts in the case of such necessity to procure such endorsement.

Eighth. The agreement of the party of the second part to withhold said deed of trust from record for ninety days, is conditioned upon the faithful performance by the party of the first part of each and every agreement, provision and stipulation contained in this contract, and the failure of said party of the first part to make payment on said "University Fund," or any instalment of interest thereon, as provided for herein, or to keep the title to "Woodley Park" in the condition it now is, unchanged by any conveyance, encumbrance or assignment by the Trustees, Waggaman and Ridout, or any party in interest, or the death of said Waggaman, or his failure to secure at the execution of this paper, or within the further time stipulated, from the equitable owners of "Woodley Park," under the deed in trust to Waggaman and Ridout, the authoriza-

72 tion for, or assent to, the deed of trust to be given as herein provided, or to obtain from the makers of collateral paper the endorsement herein provided for in accordance with article seven hereof, or if the said party of the second part, by reason of the filing of suits against said Waggaman, or the execution by Waggaman of any deed or instrument of assignment, or other act by, or condition relating to said Waggaman, has, in the opinion of Charles J. Bonaparte, Michael Jenkins and George E. Hamilton, reasonable ground to apprehend that the said party of the first part is, or is about to become, financially embarrassed, or if any of the conditions of this Agreement are broken or unfulfilled, then, because of any such happening, breach of condition or failure to perform on the part of said party of the first part, the said deed of trust may then be forthwith recorded, and the party of the second part will be free to proceed thereon, and to pursue all of its legal rights unobstructed by this agreement or any provision thereof.

In testimony whereof, the said party of the first part has hereunto set his hand and affixed his seal, and the said party of the second part has caused its corporate name and seal to be hereunto signed and affixed by James Cardinal Gibbons, Archbishop of Baltimore, President of the Board of Directors of the Catholic University of America, and attested by George A. Dougherty, its acting Secretary and custodian of seal, both to this and duplicate of like tenor and date on the day and year first above written.

THOS. E. WAGGAMAN. [SEAL.]

Witness:

As to Thos. E. Waggaman
JOHN J. HAMILTON.

THE CATHOLIC UNIVERSITY OF
AMERICA,
By JAMES CARD. GIBBONS,
Archbishop, Baltimore, President of the Board of Directors."

Attest:

GEORGE A. DOUGHERTY,
Acting Secretary and Custodian of the Seal.

73 Counsel for defendants then offered in evidence a certified copy of a deed of trust bearing date July 27, 1904, made by Waggaman and Ridout, Trustees, to secure The Catholic University in the sum of \$876,168.96, according to the tenor of said agreement, to which offer the plaintiff's counsel objected for the same reasons set forth in their objection to the admission of said agreement in evidence, but the objection was overruled, to which ruling of the court the plaintiff then and there excepted, and said exception was noted upon the minutes of the court. Said deed of trust is in the words and figures following:

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Liber 2842, Folio 13 *et seq.*

Trust. Recorded Aug. 22, 1904, 2.16 P. M.

Waggaman and Ridout, Trs.,
to
Hamilton and Williamson, Trs.

This deed, Made this Twenty-fifth day of July, A. D. 1904, by and between Thomas E. Waggaman and John Ridout, Trustees, both of the City of Washington, District of Columbia, parties of the first part, and George E. Hamilton and Irving Williamson, of the same place, parties of the second part.

Whereas, The said Thomas E. Waggaman is justly indebted unto the Catholic University of America in the full sum of Eight hundred and seventy-six thousand one hundred and sixty-eight dollars and ninety-six cents (\$876,168.96) for which the said Thomas E. Waggaman has made or caused to be made or endorsed to the Catholic University of America the following described notes, to wit: Notes numbered 1, 2 and 3, made by Cecilia M. Coughlin, No. 1 for \$30,000 and Nos. 2 and 3 for \$5,000 each, all dated November 10th, 1892, payable three years after date with interest to Thomas E. Waggaman, said notes being endorsed by said Waggaman to the Catholic University of America, payment being extended to November 10, 1902; Note numbered 4, made by E. T. Keller, for \$40,000 dated November 24, 1893, payable to the order of Samuel E. Allen, Jr., on or before July 10, 1895, payment being extended to November 24, 1903, and endorsed by said Allen to the Catholic University of America; Note numbered 5, made by James B. Nicholson, for \$22,423.40 dated October 31, 1892, payable on or before one year to the order of Samuel E. Allen, Jr., payment being extended to October 31, 1904, and by said Allen endorsed to the Catholic University of America; Note numbered 6, made by James B. Nicholson, for \$14,101, dated December 21, 1892, payable on or before one year to the order of C. M. Coughlin, payment being extended to September 21, 1904, and by said Coughlin endorsed to the Catholic University of America; Note numbered 7, made by M. F. Riley for \$20,762.19 dated September 23, 1895, payable on or before three years, to the order of C. M. Coughlin, payment being extended to September 23, 1904, and by said Coughlin endorsed to the Catholic University of America;

Note numbered 8 made by W. Seymour McLeod, for \$2,500 dated November 14, 1895, payable on or before two years, to Samuel E. Allen, Jr., and by said Allen endorsed to the Catholic University of America, payment being extended to August 14, 1904; Note numbered 9, made by said Samuel E. Allen, Jr., for \$35,635, dated August 6, 1901, payable on or before three years to the Catholic University of America; Note numbered 10 made by R. L. Phillips, for \$15,058.24, dated March 25, 1896, payable two years after date to the order of Samuel E. Allen, Jr., and by said Allen endorsed to the Catholic University of America, payment being extended to

September 25, 1904; Note numbered 11 made by Charles S. Drury, for \$19,556.85, dated September 6, 1898, payable on or before three years to the Catholic University of America, payment being extended to September 6, 1904;

Note numbered 12, made by M. F. Riley, for \$54,000 dated March 7, 1898, payable on or before three years to the Catholic University of America, payment being extended to September 7, 1904; Note numbered 13 made by W. Seymour McLeod, for \$41,133.71, dated November 3, 1894, payable on or before three years to the order of S. E. Allen, Jr., and by said Allen endorsed to the Catholic University of America, payment being extended to August 3, 1904; Note numbered 14 made by William M. Hodges, for \$30,879, dated January 13, 1893, payable on or before two years to the order of S. E. Allen, Jr., and by said Allen endorsed to the Catholic University of America, payment being extended to January 13, 1905.;

76 Note numbered 15 made by W. Seymour McLeod for \$60,600, dated June 1, 1895, payable on or before three years to the order of the Catholic University of America, payment being extended to September 1, 1905;

Note numbered 16 made by W. M. Sharkey, for \$10,965.41, dated January 18, 1904, payable on or before three years to the order of the Catholic University of America;

Note numbered 17, made by M. G. Soleau, for \$16,935.95 dated May 18, 1896, payable on or before three years, to the order of the Catholic University of America, payment being extended to May 18, 1905;

Note numbered 18, made by L. L. Nicholson, Jr., for \$23,283, dated July 17, 1900, payable on or before three years to the order of the Catholic University of America, payment being extended to July 17, 1906;

Note numbered 19, made by W. Seymour McLeod, for \$50,000, dated January 23, 1895, payable on or before two years to the order of Thomas E. Waggaman, and by said Waggaman endorsed to the Catholic University of America, payment being extended to January 23, 1907;

Note numbered 20, made by A. C. Yonson, for \$48,500 dated July 8, 1896, payable on or before one year to the order of the Catholic University of America, payment being extended to July 8, 1906;

Note numbered 21, made by A. C. Yonson, for \$46,894.51 dated April 25, 1896, payable on or before three years to the order of Thomas E. Waggaman and by said Waggaman endorsed to the Catholic University of America, payment being extended to April 25, 1905;

Note numbered 22, made by Louis P. Keller, for \$50,000, dated October 22, 1896, payable on or before three years to the order of the Catholic University of America, payment being extended to October 22, 1906;

77 Note numbered 23, made by S. E. Allen, Jr., for \$153,000, dated June 5, 1897, payable on or before three years to the order of the Catholic University of America, payment being extended to June 6, 1906;

Note numbered 24, made by C. M. Coughlin, for \$56,982, dated January 18, 1901, payable on or before three years to the order of the Catholic University of America, payment being extended to January 18, 1907; and

Note numbered 25, made by W. M. Sharkey for \$22,958.70 dated January 6, 1900, payable on or before three years to the order of the Catholic University of America, payment being extended to January 6, 1906;

The payment of all of the foregoing notes being guaranteed by the written endorsement thereon of Thomas E. Waggaman.

Of the foregoing notes, by an agreement in writing made and entered into on the 13th day of July, 1904, by and between the said Thomas E. Waggaman and the Catholic University of America, notes numbered 1, 2, 3 and 4, are to be paid on or before the 15th day of October, 1904, notes numbered 5 to 13, inclusive, are to be paid on or before the first day of January, 1905; and notes numbered from 14 to 25, inclusive, are to be paid according to their tenor; the interest on all of said notes to be paid, as provided in said agreement of July 13, 1904, on the first day of each and every month.

And whereas, the said parties of the first part desire to further secure the prompt payment of said debt and interest thereon, when and as the same shall become due and payable according to said agreement of July 13, 1904, and all costs and expenses incurred in respect thereto, including reasonable counsel fees incurred or paid by the said parties of the second part or substituted trustee or trustees or by any person hereby secured, on account of any litigation at law or in equity which may arise in respect to this trust or
78 the property hereinafter mentioned, and of all money which may be advanced as provided herein, with interest on all such costs and advances from the date thereof.

Now, therefore, this indenture witnesseth: that the parties of the first part, in consideration of the premises and of one dollar, lawful money of the United States of America, to them in hand paid by the parties of the second part, the receipt of which, before the sealing and delivery of these presents, is hereby acknowledged, have granted, bargained and sold, and do hereby grant, bargain and sell unto the parties of the second part, the following described land and premises situate in the County of Washington, District of Columbia, known and described as all those certain pieces or parcels of land and premises situated and being in the District of Columbia and now known as Woodley Park, or Waggaman and Ridout, Trustees' Addition to the City of Washington, whether the same be subdivided or unsubdivided, including roads, streets, avenues and other spaces not dedicated to the public and as the same may appear from the various subdivisions of part of Pretty Prospect, Woodley, Waggaman and Ridout, Trustees' Addition to the City of Washington and Woodley Park, which are recorded in Libers Governor Shepherd, page 17, County Books Nos. 6, page 134, 14 page 99, and 15 pages 1 and 7 of the Records in the Office of the Surveyor for said District; also all the real estate described in two certain deeds recorded in Liber 1865, folios 196 and 201 of the Land Records of the

District of Columbia, including all right, title and interest which they now possess or hold as Trustees in and to the said tracts, known as Pretty Prospect, Woodley, Waggaman and Ridout, Trustees' Addition to the City of Washington and Woodley Park, whether subdivided or unsubdivided, together with all the improvements in any wise appertaining and all the estate, right, title, interest and
79 claim, either at law or in equity or otherwise however, of the parties of the first part, of, in and to or out of the said land and premises.

In and upon the trusts, nevertheless, hereinafter declared; that is to say; in trust to permit said parties of the first part, their heirs and assigns, to use and occupy the said described land and premises and the rents, issues and profits thereof, to take, have and apply to and for their sole use and benefit until default be made in the payment of any of said promissory notes hereby secured, or any instalment of interest thereon, when and as the same shall become due and payable, or any proper cost or expense in and about the same as hereinafter provided.

And upon the full payment of all of said notes and the interest thereon, and all moneys advanced or expended as herein provided, and all other proper costs, charges, commissions, half commissions and expenses at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto the said parties of the first part, their heirs or assigns, at their cost.

And upon this further trust, upon any default or failure being made in the payment of said notes or of any instalment of principal or interest thereon, when and as the same shall become due and payable, or upon default being made in the payment, after demand therefor, of any money advanced as herein provided for, or of any proper cost, charge, commission or expense in and about the same, then and at any time thereafter, the said parties of the second part, or the trustee acting in the execution of this trust, shall have the power and it shall be their or his duty thereafter to sell, and in case of any default of any purchaser to resell the said described land and premises at public auction, upon such terms and conditions, in such parcels, at such time and place and after such previous public advertisement as the parties of the second part or the trustee acting in

the execution of this trust, shall deem advantageous and
80 proper; and to reconvey the same in fee simple upon compliance with the terms of sale, to and at the cost of, the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase money; and of the proceeds of sale or sales; Firstly, to pay all proper cost, charges and expenses, including all fees and costs herein provided for, and all moneys advanced for taxes, insurance and assessments, with interest thereon as provided herein, and all taxes general and special, due upon said land and premises at time of sale and to retain as compensation a commission of five per centum on the amount of said sale or sales; Secondly, to pay whatever may then remain unpaid of said notes, whether the same shall be due or not, and the interest thereon to date of payment, it being agreed that said notes shall, upon such sale being

made before the maturity of said notes be and become immediately due and payable at the election of the holder thereof; and Lastly, to pay the remainder of said proceeds, if any there be, to said parties of the first part, their heirs or assigns, upon the delivery and surrender to the purchaser, his, her or their heirs or assigns, of possession of the premises so as aforesaid sold and conveyed, less the expense, if any, of obtaining possession.

And it is further agreed between the parties hereto that George E. Hamilton and Irving Williamson, parties of the second part, shall release to Thomas E. Waggaman and John Ridout, Trustees, parties of the first part, their heirs and assigns, free from the operations and lien of these presents, any of the following described real estate upon payment by the parties of the first part or Thomas E. Waggaman to the Catholic University of America, the party hereby secured, in the following manner:

Any of the lots in Blocks numbered Fifteen (15), Sixteen
81 (16), Seventeen (17), Eighteen (18), Nineteen (19),
Twenty (20), Twenty-one (21), Twenty-two (22), Twenty-
three (23) and the triangular block bounded by Connecticut Avenue
and Twenty-fourth Street as said lots and blocks are shown on the
plat or map of Woodley Park recorded in County Book No. 15,
page No. 7, of the records in the Office of the Surveyor for said Dis-
trict, to be released as aforesaid upon payment to said University on
account of the indebtedness secured by these presents of a sum equal
to fifty-five cents (55¢) per square foot for the ground released.

Any of the remaining property conveyed by this trust including
the unsubdivided property and the property mentioned and de-
scribed in the two deeds recorded in Liber No. 1865, folios Nos. 196
and 201, of the Land Records of the District of Columbia, to be
released as aforesaid upon payment to said University on account
of the indebtedness secured by these presents, of a sum equal to
thirty cents (30¢) per square foot for the ground released.

And the said parties of the first part do hereby agree at their own cost, during all the time wherein any part of the matter hereby secured shall be unsettled or unpaid, to keep the said improvements insured against loss by fire, in the name and satisfaction of the parties of the second part, or substituted trustee, in such fire insurance company or companies as the said parties of the second part may select, who shall apply whatever may be received therefrom to the payment of the matter hereby secured, whether due or not, unless the party entitled to receive shall waive the right to have the same so applied; and also to pay all taxes and assessments, both gen-

82 general and special, that may be assessed against or become due on, said land and premises during continuance of this Trust,

and that upon any neglect or default to so insure, or to pay taxes and assessments, any party hereby secured may have said im-
provements insured and pay said taxes and assessments, and the ex-
pense thereof shall be a charge hereby secured and bear interest at
the rate of six per centum per annum from the time of such pay-
ment.

And it is further agreed that if the said property shall be ad-

vertised for sale as herein provided and not sold, the trustees or trustee acting shall be entitled to one half the commission above provided, to be computed on the amount of the debt hereby secured. And the said parties of the first part covenant that they will warrant specially the land and premises hereby conveyed, and that they will execute such further assurances of said land as may be requisite or necessary.

In witness whereof, the parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

THOS. E. WAGGAMAN, *Trustee.* [SEAL.]
JOHN RIDOUT, *Trustee.* [SEAL.]

Signed, sealed and delivered in the presence of—
CLARKE WAGGAMAN.

UNITED STATES OF AMERICA, *District of Columbia, To wit:*

I, Clarke Waggaman, a Notary Public in and for the District of Columbia, do hereby certify that Thomas E. Waggaman and John Ridout, Trustees, parties to a certain Deed bearing date on the Twenty-fifth day of July, 1904, and hereto annexed, personally appeared before me in said District, the said Thomas E. Waggaman and John Ridout, Trustees, being personally well known to me as the persons who executed the said Deed and acknowledged the same to be their act and deed.

Given under my hand and seal this Twenty-fifth day of July, A. D. 1904.

[NOTARIAL SEAL.]

CLARKE WAGGAMAN,
Notary Public, D. C.

DISTRICT OF COLUMBIA,
OFFICE OF THE RECORDER OF DEEDS.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber 2842, folio 13 *et seq.* one of the Land Records of the District of Columbia.

In testimony whereof, I have hereunto set my hand and affixed the seal of this office this 11th day of October, A. D. 1907.

[Seal of Office.]

R. W. DUTTON,
Deputy Recorder of Deeds, D. C.

Counsel for defendants thereupon offered in evidence a certified copy of the bill of sale from Thomas E. Waggaman, and wife, to The Catholic University of America, and dated November 22, 1901, to which offer the plaintiff's counsel objected on the ground of irrelevancy and incompetency, but the objection was overruled, to which ruling of the court the plaintiff then and there excepted, and said exception was noted upon the minutes of the court. Said bill of sale is in the words and figures following:

"Liber 2761, folio 265.

Deed. Recorded November 28th, 1903. 10-33 A. M.

Thomas E. Waggaman *et ux.*
to
Catholic University of America.

84 This indenture Made this twenty-second day of November, in the year nineteen hundred and one, by and between Thomas E. Waggaman and Christine Waggaman, his wife, of the District of Columbia, parties of the first part, and the Catholic University of America, a corporation, of said District, party of the second part.

Witnesseth: That said parties of the first part for and in consideration of the sum of ten dollars lawful money of the United States, to them in hand paid by said party of the second part at and before the sealing and delivery of these presents, the receipt whereof, is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain and sell unto the said party of the second part, its successors and assigns forever, all those chattels and articles of personal property consisting of pictures and paintings, both in oil and water color, prints, engravings, etchings and drawings, together with all the curios, bronzes, bric-a-brac, articles of virtu, swords, pottery, china and all objects and articles of any kind whatsoever contained in the galleries of said Thomas E. Waggaman located as an annex to his residence No. 3300 O Street, N. W., Washington, D. C. To have and to hold the said Chattels and personal property unto the said party of the second part its successors and assigns forever, And the said parties of the first part for themselves their executors and administrators do hereby covenant and agree to and with the said party of the second part, its successors and assigns, that said chattels and personal property are free from any prior lien or incumbrance, and that they will warrant and defend the same unto the said party of the second part from and against the claims of all persons whomsoever. And further that they will execute any other conveyance that may be required by said party of the second part for the more effectual transfer of the title to said chattels.

85 In witness whereof the said parties of the first part have hereunto set their hands and affixed their seals, the day and year first above written.

T. E. WAGGAMAN. [SEAL.]
CHRISTINE WAGGAMAN. [SEAL.]

Signed, sealed and delivered in the presence of—
C. S. DRURY.

DISTRICT OF COLUMBIA, ss:

I, Charles S. Drury, a Notary Public in and for the District of Columbia do hereby certify that Thomas E. Waggaman and Chris-

tine Waggaman his wife parties to the Bill of Sale, bearing date November 22, 1901, and hereto annexed, personally appeared before me in the District aforesaid, the said Thomas E. Waggaman and Christine Waggaman his wife being personally well known to me to be the persons who executed the said Bill of Sale and acknowledged the same to be their act and deed; and the said Christine Waggaman having been by me examined privily and apart from her said husband and having the Bill of Sale aforesaid fully explained to her by me, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed and delivered the same, and that she wished not to retract it. Given under my hand and Notarial Seal this 22nd day of November, A. D. 1901.

[NOTARIAL SEAL.]

CHARLES S. DRURY,

Notary Public.

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OFFICE OF THE RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber 2761 folio 265 *et seq.*, one of the Land Records of the District of Columbia.

In testimony whereof, I have hereunto set my hand and affixed the seal of this office this 15th day of October, A. D. 1907.

(Signed)

Deputy Recorder of Deeds, D. C."

Counsel for defendants thereupon offered in evidence the petition in bankruptcy Cause No. 357, for the adjudication of Thomas E. Waggaman, bankrupt, to which offer plaintiff's counsel objected on the ground that the same was irrelevant and immaterial, but the objection was overruled, to which ruling of the court the plaintiff then and there excepted, and said exception was noted upon the minutes of the court. Said petition is in the words and figures following:

"In the Supreme Court of the District of Columbia, Holding a Court in Bankruptcy.

In re Bankruptcy of THOMAS E. WAGGAMAN. Bankruptcy. No. 357.

The petition of the Second National Bank of Washington, the National Bank of Washington and the National Metropolitan Bank of Washington, each being a body corporate under the laws of the United States, respectfully shows:—

That Thomas E. Waggaman, of the City of Washington, District of Columbia, has for the greater portion of six months next preceding the date of filing this petition, had his principal place of business at No. 917 F Street, Northwest, in the said City and District, and owes debts to the amount of one thousand (1000) dollars.

That your petitioners are creditors of the said Thomas E. Waggaman, having provable claims amounting in the aggregate, in excess

of securities held by them, to the sum of five hundred (500) dollars. That the nature and amount of your petitioners' claims are as follows:—

That your petitioner, the Second National Bank of Washington, is the holder and owner of a promissory note of John L. Waggaman, dated May 10, 1904, for the sum of fifteen hundred (1500) dollars, payable to the order of said Thomas E. Waggaman three months after date, with interest at the rate of six per centum per annum; that said note was endorsed by said payee to said petitioner and demand of payment and notice of non-payment duly waived thereon by said payee; said note before its maturity was discounted by said petitioner for said payee for the face value thereof, and the same is overdue and wholly unpaid.

That your petitioner the said The National Bank of Washington is the holder and owner of a promissory note of said Thomas E. Waggaman, dated August 7, 1904, for the sum of ten thousand (10,000) dollars, payable three months after date with interest thereon at the rate of six per centum per annum to the order of and endorsed by John W. Pilling; said note on or about the date thereof, was discounted by said petitioner for the face value thereof, and no portion of the same has been paid.

That your petitioner, the National Metropolitan Bank of 88 Washington, is the holder and owner of a promissory note of said Thomas E. Waggaman, dated March 17th, 1899, for the sum of thirty thousand (30,000) dollars, payable to it on demand with interest at the rate of five per centum per annum, payable at its bank; that due demand for the payment of said note has been made and the same remains wholly unpaid. That it is the holder and owner of a certain promissory note of John F. Waggaman, dated August 6, 1904, for the sum of ten thousand (10,000) dollars, payable to the order of Thomas E. Waggaman, one month after date, with interest at the rate of six per centum per annum; that said note is endorsed by the said Thomas E. Waggaman and was discounted by said petitioner for the face value thereof, for the benefit of said Thomas E. Waggaman; that said John F. Waggaman was merely the maker of said note for the accommodation of said Thomas E. Waggaman and that said Thomas E. Waggaman is in fact the primary debtor for the amount thereof, no portion of said note having been paid.

And your petitioners further represent that the said Thomas E. Waggaman is insolvent, and that within four months next preceding the date of this petition the said Thomas E. Waggaman committed an act of bankruptcy, in that he did heretofore, to wit, on the 25th day of July, 1904, together with John Ridout, transfer and convey while said Thomas E. Waggaman was insolvent, to George E. Hamilton and Irving Williamson, Trustees by a certain deed of trust dated on said last mentioned day, certain tracts or pieces of land owned by said Thomas E. Waggaman, situated in the District of Columbia, known as Woodley Park, Pretty Prospect, Woodley, Waggaman, *et al.*, Trustees' Addition to Washington, as will more fully appear

89 from said deed of trust which was recorded on the 22nd day of August, 1904, among the Land Records of the District of Columbia, and which is prayed to be read as a part hereof; said deed of trust being to secure an indebtedness of the said Thomas E. Waggaman to the Catholic University of America, amounting to eight hundred seventy-six thousand, one hundred sixty-eight (876,168) dollars and ninety-six (96) cents, represented by certain notes fully described therein, which said promissory notes he guaranteed the payment of by endorsement thereon; that said deed of trust was executed with the intent on the part of the said Thomas E. Waggaman to prefer said Catholic University of America to the aforesaid amount, over these petitioners and others of the creditors of said Thomas E. Waggaman.

Wherefore your petitioners pray that service of this petition, with a subpoena, may be made upon said Thomas E. Waggaman as provided in the acts of Congress relating to bankruptcy, and that he may be adjudged by the court to be a bankrupt within the purview of said acts.

THE SECOND NATIONAL BANK OF
WASHINGTON,

By JOHN C. ECKLOFF, *Cashier.*

THE NATIONAL BANK OF WASH-
INGTON,

By CHAS. E. WHITE, *Cashier.*

NATIONAL METROPOLITAN BANK
OF WASHINGTON,

By J. G. MOORE, *Cashier.*

WM. F. MATTINGLY,

JOHN B. LARNER,

ARTHUR PETER,

Attorneys for Petitioners.

90 UNITED STATES OF AMERICA, *District of Columbia, ss:*

We, John C. Eckloff, Charles E. White, and J. Gales Moore, being cashiers, respectively, of the above named petitioners, do hereby make solemn oath that the statements contained in the foregoing petition, subscribed by them as such cashiers in the name of said petitioners, respectively, are true; and the said John C. Eckloff does further make solemn oath that he is the cashier of said The Second National Bank of Washington; and the said Charles E. White does further make solemn oath that he is the cashier of the said, The National Bank of Washington; and the said J. Gales Moore, does further make solemn oath that he is the cashier of the said National Metropolitan Bank of Washington.

Before me, a Notary Public, this twenty-third day of August, A. D. 1904.

EMORY H. BOGLEY,
Notary Public."

Counsel for defendants thereupon offered in evidence the answer filed by the Catholic University to said petition in bankruptcy, Cause No. 357, to which offer counsel for plaintiff objected on the ground of irrelevancy, but the objection was overruled, to which ruling of the court the plaintiff then and there excepted, and said exception was noted upon the minutes of the court. Said answer is in the words and figures following:

91 In the Supreme Court of the District of Columbia, Holding
a District Court.

In re THOMAS E. WAGGAMAN. Bankruptcy. No. 357.

By leave of the Court first had and obtained, the Catholic University of America, intervening in the above entitled cause, filed this answer to the petition of the petitioning creditors.

The Catholic University of America denies that "the said Thomas E. Waggaman committed an act of bankruptcy in that he did, heretofore, to wit, on the 25th day of July, 1904, together with John Ridout, transfer and convey to George E. Hamilton and Irving Williamson, Trustees, by a certain deed of trust dated the 25th day of July, 1904, certain tracts or pieces of land owned by said Thomas E. Waggaman situated in the District of Columbia, and known as Woodley Park, Pretty Prospect, Woodley, Waggaman, *et al.*, Trustees' Addition to Washington, as will more fully appear from said deed of trust, which was recorded on the 22 day of August, 1904, among the Land Records of the District of Columbia, which is prayed to be read as part hereof, and the said deed of trust being to secure an indebtedness of said Thomas E. Waggaman to the Catholic University of America, amounting to \$876,168.96, represented by certain notes fully described therein, which said promissory notes he guaranteed the payment of by an endorsement thereon; that said deed of trust was executed with the intent on the part of the said Thomas E. Waggaman to prefer said Catholic University of America to the aforesaid, amount, over these petitioners and others of the creditors of said Thomas E. Waggaman," as in said petition set forth.

This respondent avers that said Thomas E. Waggaman was
92 at the time of the execution of this deed of trust the Treasurer
of the Catholic University of America, and had been such
Treasurer for many years; that from time to time since 189 $\frac{1}{2}$, money
in various sums, and to the total aggregate of \$876,168.96, was
placed in his hands for investment, it being a part of his duty to
receive all monies paid to the University as capital, and to invest
all the said capital securely and to the best advantage as regards
safety, in accordance with the by-laws of the Catholic University of
America; that upon these sums so placed with said Waggaman for
investment, interest, as it became due, was always promptly paid by
said Waggaman, and that up to and after the delivery of said deed
of trust there had never been any default in the payment of said
interest.

That in the latter part of 1903 the said University called upon Thomas E. Waggaman, Treasurer, to deliver over the securities held by him on its behalf, to assure it against loss by reason of the investments so made; that upon an examination of these securities by a Committee appointed by the University they were considered unsatisfactory and insufficient for the said purpose; that thereupon, in the early part of May, 1904, the University through the said Committee, requested Thomas E. Waggaman to give other and additional security for said fund. When this request was made the said Thomas E. Waggaman stated to the Committee that in his opinion the securities given were ample, but that he was desirous of doing all in his power to comply with the wishes of the University, and would take into consideration the request, and in a short time inform the University what could be done in that regard; that at this interview, in response to a question by one of the Committee, Mr. Michael Jenkins of Baltimore City, Mr. Waggaman stated that his financial condition was excellent, and that over and above all liabilities he was worth considerably more, certainly not less,

93 under the most conservative estimate, than one million dollars;

he was then interrogated as to the use made of the monies so placed in his hands for investment by the University, and stated that nearly the whole thereof had been used in the acquisition and development of suburban property, and in very large part in recent improvements in Woodley Park, which statements this Respondent avers to be true, and the Committee thereupon expressed to Mr. Waggaman their opinion that the title to property thus made valuable through the expenditure of the University's money, should be vested, as a matter of equity and good conscience, in the University, or in some one who would hold the title primarily for its benefit and this Respondent avers that it was already the equitable owner thereof; to this suggestion Mr. Waggaman objected only on the ground that the conveyance of this property to the University, or a trust for the large amount of his indebtedness to said University would have a tendency to embarrass financially any business man in Washington, but promised that he would consult with his attorney, and give the matter most careful consideration, and expressed the hope that in a few days an arrangement might be made in accordance with the request of the University. After considerable negotiation, principally with Mr. Irving Williamson, attorney for Mr. Waggaman, it was agreed that the trust referred to in said petition should be given, which provides for the extension of the time of payments of some of the notes representing the indebtedness of said Waggaman to the University, and on the further condition that the said deed of trust would not be recorded until ninety days from the 13th of July, 1904, it being distinctly impressed upon the Committee by Mr. Waggaman that within that time we would have the ability not only to make payment of the notes then due, or nearly due, but to pay off in

94 large part, if not altogether, his entire indebtedness to the University. In discussing the withholding of the said deed of trust from record, the question of possible financial embarrass-

ment to one whose holdings were so largely in unproductive and suburban real estate was raised, and it was very fully impressed upon the Committee by Mr. Waggaman and his said attorney, that this danger not only did not exist, but that the postponement of payment on certain of the notes of the University would very certainly enable Mr. Waggaman, with negotiations then in hand and in view, to pay off possibly within ninety days the entire indebtedness due by him to the University. It was with this thought in mind that this additional security was taken, and the agreement made to withhold it from record for the period above mentioned, Mr. Williamson, on behalf of Mr. Waggaman, assuring the Committee and the Counsel of the University, that Mr. Waggaman was perfectly solvent and that no reasonable apprehension of bankruptcy or insolvency on his part then existed; but if at any time such an unlooked for happening, by the filing of suits, or otherwise, should, in the opinion of the committee, seem reasonably probable, then the said trust might be recorded without regard to the limitation or condition above referred to. In the course of these negotiations the fact was brought to light that monies derived from other sources, as well as the monies of the University, had been used in the acquisition and development of property included in the trust subsequently given, title to the said property being vested in Thomas E. Waggaman and John Ridout, as Trustees, but without any instrument of record to show what persons were interested equitably in the said property, and it was part of the agreement on the part of Mr. Waggaman, that the assent of the other parties equitably interested should be secured within a specified time to the deed
95 of trust so made, although there was full power and authority vested in said Trustees to sell, encumber or otherwise deal with the said property without the assent of any of the said other parties equitably interested. The title of said Waggaman and Ridout, Trustees, and their power to deal with the property above referred to, was derived through a deed in trust from Fannie A. Moore to Thomas E. Waggaman and John Ridout, dated July 14, 1887, and recorded July 22, 1887, in Liber 1269, folio 324, of the Land Records of the District of Columbia, which said deed is referred to and asked to be read as part hereof, and the legal title to said property was not at that time, and never was, in said Thomas E. Waggaman.

In view of the foregoing the Catholic University of America avers that the said deed of trust was not an act of bankruptcy, and was not, nor was it intended by the said Thomas E. Waggaman to constitute or create such a preference or conveyance as is prohibited by the bankrupt law, nor was it given by said Waggaman in anticipation of financial embarrassment or insolvency, or of the possible institution of bankruptcy proceedings by any one, and the said University avers that the said deed of trust was not received by it with any notice, anticipation or knowledge of financial embarrassment, or of pending insolvency, or bankruptcy proceedings, but was received with the positive assurance by the said Waggaman that over and above all liabilities he was worth not less, and considerably

more, than one million dollars; and the said University denies that the said deed of trust or conveyance constituted a transfer on the part of said Thomas E. Waggaman while insolvent, of any portion of his property to one or more of his creditors, with the intent to prefer such creditors over his other creditors.

Wherefore, the Catholic University of America, submitting
96 that as no act of bankruptcy other than the conveyance
by said Waggaman to said Hamilton and Williamson, Trustees,
is alleged in said petition, that the same should be dismissed.

GEORGE E. HAMILTON,
CHARLES J. BONAPARTE,
Attorneys for Above Respondent.

I, James Gibbons, Chancellor of the Catholic University of America, do solemnly swear that I have read the foregoing Answer subscribed by me, and know the contents thereof; that the matters and things therein stated on my personal knowledge are true, and the matters and things therein stated on information and belief, I believe to be true.

JAMES CARD. GIBBONS,
Chancellor of the Catholic University of America.

Subscribed and sworn to before me this 7th day of September,
A. D. 1904.

As witness my hand and Notarial Seal.

[SEAL.]

OREGON MILTON DENNIS,
Notary Public.

Filed September 10, 1904.

J. R. YOUNG, Clerk.

I, Michael Jenkins, of the City of Baltimore and State of Maryland, do solemnly swear that I have read the foregoing answer of the Catholic University of America; that about January, 1904, I was appointed by the Trustees of said corporation as a member
97 of the Special Committee directed to investigate and report upon the condition of the investments of the said corporation as set forth therein; that such portions of the said answer as relate to matters and things within my personal knowledge are true and that such portions as relate to matters and things whereof I am informed are true to the best of my knowledge, information and belief; and I further and solemnly swear that I was present at the interview between Mr. Thomas E. Waggaman and certain members of the Special Committee and the counsel of the University in the month of May last, to which reference is made in the said answer; that on this occasion Mr. Waggaman was asked by me what he was worth over and above his just debts at that time, and replied, as nearly as I can remember his words, that, estimating his assets at the lowest reasonable valuation, he was then worth at least one million dollars above his just debts and liabilities, but that he believed himself to be worth very much more. During the said interview Mr. Waggaman was asked by Mr. Charles J. Bon-

parte what use he made of the moneys placed in his hands for investment by the University, and replied that he had used the same in the purchase and improvement of suburban property, which, in answer to a further question from Mr. Bonaparte, he identified as a tract known as "Woodley Park".

Mr. Bonaparte then enquired if the title to "Woodley Park" stood in the name of the University, and Mr. Waggaman replied in the negative, adding that the title was held by trustees. Mr. Bonaparte then said, in substance, that, the University being the equitable owner of the property, the title ought to be vested in it, or in some one who should hold the same for its benefit, to which all members

of the Committee present and Mr. George E. Hamilton,
98 Counsel of the University assented, and Mr. Waggaman re-
plied in substance that, to make a conveyance of such a tract
of land or create a trust thereon for so large an amount as that of
the funds placed in his hands by the University would seriously
affect the credit of any business man in Washington, but that he
would like to have the views of the Committee in a form which he
could submit to his attorney, as he was very desirous of complying
with the wishes of the Trustees.

MICHAEL JENKINS.

STATE OF MARYLAND, *City of Baltimore, To wit:*

Sworn and subscribed before me a Notary Public of the said State, in and for the City aforesaid, duly commissioned and qualified, this 7th day of September, A. D. 1904.

In witness whereof, I have hereunto set my hand and affixed my seal notarial on the day and year first above written.

[SEAL.]

OREGON MILTON DENNIIS,
Notary Public.

It was thereupon stipulated between counsel that in the bankruptcy cause No. 361, in which Thomas E. Waggaman was adjudged a bankrupt, Mr. Andrew Y. Bradley was appointed referee.

Counsel for defendants then offered in evidence a certified copy of proof of claim made by The Catholic University of America before the referee in bankruptcy, in Cause No. 361, to which offer plaintiff's counsel objected for the same reasons, but said objection was overruled, to which ruling of the court plaintiff then and there

99 excepted, and said exception was noted upon the minutes of the court. Said proof of claim is in the words and figures following:

\$60,600.

"WASHINGTON, D. C., June 1st, 1895.

On or before *three* years after date I promise to pay to the order of The Catholic University of America Sixty thousand and six hundred 00/100 Dollars for value received, with interest, payable quarterly, at the rate of six per centum per annum until paid. Principal and interest payable at the office of Thos. E. Waggaman, Washington, D. C.

As collateral security for the payment of the above note there is deposited with said Thos. E. Waggaman certain notes, secured upon real estate, which notes are enumerated and described in a list, known as "List of Notes No. One," said list being also on file in the office of said Waggaman.

And in case this note, or any instalment of interest thereon, is not paid quarterly at maturity, said Waggaman has the authority, at the maturity of this note, or any time thereafter, in his discretion, without advertisement or notice, to dispose of so much of said collateral as may be necessary, and apply the proceeds thereof to the payment of this note and interest, and the remainder of said proceeds, if any, to account for to such person as may be entitled thereto.

W. SEYMOUR McLEOD.

Endorsed on back:

The principal of this note when due, and the interest as it matures, is guaranteed by

T. E. WAGGAMAN.

Within note extended to June 1, 1899, on or before.

Within note extended for three years from June 1, 1899 on or before June 1, 1902.

100 Within note extended for three years from Sept. 1, 1902 to Sept. 1, 1905, with interest payable quarterly at 5%.

Interest paid to June 1, 1904.

A number of these notes having been paid, the security on this note is now transferred to List No. 1.

\$14,101.

WASHINGTON, D. C., December 21, 1892.

On or before one year after date I promise to pay to the order of C. M. Coughlin fourteen thousand One Hundred and one 00/100 Dollars for value received, with interest, payable quarterly, at the rate of six per centum per annum until paid, principal and interest payable at the office of Thos. E. Waggaman, Washington, D. C.

As collateral security I have deposited with said Waggaman the following notes.

Note of Benj. Bevier for \$1050 of July 16/92 for 3 years, secured on lots 45 & 46 sq. 18 Wesley Hts.

Note of G. M. & G. W. Hildreth for 1260 of June 24/92 18 to 80 mos. Lots 27 & 28 Sq. 13 Wesley Hts.

Note of M. J. Colbert for 1206 of Oct. 22/92 2 & 3 years. Lots 34 to 37 Sq. 28 Wesley Hts.

Note of G. O. Atherton for 395 Oct. 19/92 4 mos. Lots 46 to 28 Sq. 25 Wesley Hts.

Note of A. M. & E. S. Ives for 5365 of Nov. 14/92 on or before 3 yrs. Lots 14 16 Sq. 8 Wesley Hts.

Note of H. D. Fry for 4823 of Dec. 21/92 5 yrs. Lots 11 to 20 Sq. 5 Wesley Hts.

and in case this note or any instalment of interest thereon shall not

101 be paid at maturity I hereby give the said Waggaman or any person to whom this note and collateral may be transferred, full authority to sell the above described collateral, or any part thereof, immediately on the maturity of said note, or at any time thereafter, at public or private sale, in his discretion, without advertising the same, or giving me any notice, and after the payment of any cost of expense of such sale to apply so much of the proceeds of said collateral to the payment of this note and interest as may be necessary, and the remainder of said proceeds of sale, if any, to account for to me.

In case the proceeds of said sale shall not cover the principal and interest of this note, and the expenses of the sale, I hold myself bound to pay any such deficiency to said C. M. Coughlin or to any other person or persons to whom this note and collateral may be transferred.

JAMES B. NICHOLSON.

Endorsed on back:

Pay to the order of Catholic University of America.

C. M. COUGHLIN.

The principal of this note when due, and the interest as it matures,
is guaranteed by

T. E. WAGGAMAN.

Within note extended to Sept. 21, 1904, on or before with interest payable quarterly at 5%.

Interest paid to June 21, 1904.

\$30879. WASHINGTON, D. C., Jan'y 13th, 1893.

On or before two years after date I promise to pay to the
order of Samuel E. Allen, Jr., Thirty Thousand Eight Hun-
dred and Seventy Nine 00/100 Dollars for value received,
with interest, payable quarterly at the rate of six per centum per
annum until paid, principal and interest payable to the office of
Thos. E. Waggaman, Washington, D. C.

As collateral security I have deposited with said Allen, Jr. A list of notes secured on Real Est. aggregating \$30,879 On List No. One.

And in case this note or any instalment of interest thereon shall not be paid at maturity I hereby give said Allen, Jr., or any person to whom this note and collateral may be transferred, full authority to sell the above-described collateral, or any part thereof, immediately on the maturity of said note, or any time thereafter, at public or private sale, in his discretion, without advertising the same, or giving me any notice, and after the payment of any cost or expense of such sale to apply so much of the proceeds of said collateral to the payment of this note and interest as may be necessary, and the remainder of said proceeds of sale, if any, to account for to me.

In case the proceeds of said sale shall not cover the principal and interest of this note, and the expenses of the sale, I hold myself

bound to pay any such deficiency to said Allen, Jr., or to any other person or persons to whom this note and collateral may be transferred.

WILLIAM M. HODGES.

Endorsed on back:

Within note extended on or before Jan'y 13th, 1899.

Pay to the order of Catholic University of America.

SAM'L E. ALLEN, JR.

103 The principal of this note when due, and the interest as it matures, is guaranteed by

T. E. WAGGAMAN.

Within note extended to Jan'y 13, 1902.

Within note extended to Jan'y 13, 1905, with interest payable quarterly at 5%.

Interest paid to July 13, 1904.

\$20762.19/100. WASHINGTON, D. C., September 23rd, 1895.

On or before three years after date I promise to pay to the order of C. M. Coughlin Twenty Thousand Seven Hundred and Sixty Two and 19/100 Dollars for value received, with interest, payable quarterly at the rate if six per centum per annum until paid, principal and interest payable at the office of Thos. E. Waggaman, Washington, D. C.

As collateral security I have deposited with said Waggaman

A list of notes No. 33 aggregating \$20,762.19/100 and in case this note or any instalment of interest thereon shall not be paid at maturity I hereby give the said Coughlin or any person to whom this note and collateral may be transferred, full authority to sell the above-described collateral, or any part thereof, immediately on the maturity of said note, or at any time thereafter, at public or private sale, in his discretion, without advertising the same or giving me any notice, and after the payment of any cost or expense of such sale to apply so much of the proceeds of said collateral to the payment of this note and interest as may be necessary, and the remainder, of said proceeds, if any, to account for to me.

104 In case the proceeds of said sale shall not cover the principal and interest of this note, and the expenses of sale, I hold myself bound to pay any such deficiency to said C. M. Coughlin or any other person or persons to whom this note and collateral may be transferred.

M. F. RILEY.

Endorsed on back:

Pay to the order of the Catholic University of America.

C. M. COUGHLIN.

Demand, Notice and Protest waived.

T. E. WAGGAMAN.

The principal of this note when due, and the interest as it matures, is guaranteed by

T. E. WAGGAMAN.

Within note extended to Sept. 23, 1901, on or before.

Within note extended to Sept. 23, 1904, on or before with interest payable quarterly at 5%.

Interest paid to June 23, 1904.

\$10,965.41/100. WASHINGTON, D. C., *January 18th, 1904.*

On or before three years after date I promise to pay to the order of the Catholic University of America Four Thousand Nine Hundred and Sixty-five and 41/100 Dollars for value received, with interest payable quarterly, at the rate of five per centum per annum until paid. Principal and interest payable at the office of Thos. E. Waggaman, Washington, D. C.

As collateral security for the payment of the above note there is deposited with said Thos. E. Waggaman certain notes, secured 105 upon real estate, which notes are enumerated and described in a list, known as "List of Notes No. One," said list being also on file in the office of said Waggaman.

And in case this note, or any instalment of interest thereon, is not paid at maturity, said Waggaman has the authority, at the maturity of this note, or any time thereafter in his discretion, without advertisement or notice, to dispose of so much of said collateral as may be necessary and apply the proceeds thereof to the payment of this note and interest, and the remainder of said proceeds, if any, to account for to such person as may be entitled thereto.

W. M. SHARKEY.

Endorsed on back:

The principal of this note when due, and the interest as it matures, is guaranteed by

T. E. WAGGAMAN.

Interest paid to July 18, 1904.

\$16835.95/100. WASHINGTON, D. C., *May 18th, 1896.*

On or before three years after date I promise to pay to the order of Catholic University of America Sixteen thousand nine hundred and thirty five 95/100 Dollars for value received, with interest, payable quarterly at the rate of six per centum per annum until paid, principal and interest payable at the office of Thos. E. Waggaman, Washington, D. C.

As collateral security I have deposited with said Waggaman A list of notes numbered One.

and in case this note or any instalment of interest thereon shall not be paid at maturity I hereby give the said Waggaman or any 106 person to whom this note and collateral may be transferred, full authority to sell the above described collateral, or any part thereof, immediately on the maturity of said note, or at any time thereafter, at public sale or private sale, in discretion, without advertising the same or giving any notice, and after the payment of any cost of expense of such sale to apply so much of the proceeds of said collateral to the payment of this note and interest as may be necessary, and the remainder of said proceeds of sale, if any, to account for to me.

In case the proceeds of said sale shall not cover the principal and interest of this note, and the expenses of sale, I hold myself bound to pay any such deficiency to said Waggaman or any other person or persons to whom this note and collateral may be transferred.

M. G. SOLEAU.

Endorsed on back:

Within note extended to May 18, 1902, on or before.

Pay to the order of the Catholic University of America.

The principal of this note when due, and the interest as it matures is guaranteed by

T. E. WAGGAMAN.

Within note extended three years on or before from May 18, 1902, to May 18, 1905, interest payable quarterly at 5%.

Interest paid to May 18, 1904.

\$2500.00/100. WASHINGTON, D. C., November 14, 1895.

Two years after date I promise to pay to the order of Samuel E. Allen, Jr., Twenty five hundred Dollars for value received,
107 payable at the office of Thos. E. Waggaman, with interest payable quarterly at the rate of six per centum per annum until paid.

W. SEYMOUR McLEOD.

Address: ____.

Do not destroy this note as it must be shown to get release.

No. ____.

Secured on real estate notes List No. 1.

Endorsed on back:

Pay to the order of the Catholic University of America without recourse to me.

SAM'L E. ALLEN, JR.

Within note extended on or before Nov. 14th, 1900.

Demand, Notice and Protest waived.

T. E. WAGGAMAN.

The principal of this note when due, and the interest as it matures, is guaranteed by

T. E. WAGGAMAN.

Within note extended to Aug. 14, 1904, on or before, with interest payable quarterly at 5%.

Interest paid to May 14, 1904.

\$23,283.00/100. WASHINGTON, D. C., July 17th, 1900.

On or before three years after date I promise to pay to the order of The Catholic University of America Twenty-three Thousand two hundred and eighty three Dollars for value received, with interest,

payable quarterly, at the rate of five per centum per annum until paid. Principal and interest payable at the office of Thos. E. Waggaman, Washington, D. C.

108 As collateral security for the payment of the above notes there is deposited with said Thos. E. Waggaman certain notes, secured upon real estate, which notes are enumerated and described in a list, known as "List of Notes No. One, said list being also on file in the office of said Waggaman.

And in case this note, or any instalment of interest thereon, is not paid at maturity, said Waggaman has the authority, at the maturity of this note, or any time thereafter, in his discretion, without advertisement or notice, to dispose of so much of said collateral as may be necessary, and apply the proceeds thereof to the payment of this note and interest, and the remainder of said proceeds if any, to account for to such person as may be entitled thereto.

L. L. NICHOLSON, JR.

Endorsed on back:

The principal of this note when due, and the interest as it matures, is guaranteed by

T. E. WAGGAMAN.

Within note extended on or before three years to July 17, 1906.
Interest paid to July 18, 1904.

\$35,635.00/100. WASHINGTON, D. C., *August 6th, 1901.*

On or before three years after date I promise to pay to the order of the Catholic University of America Thirty five Thousand Six Hundred and Thirty-five 00/100 Dollars, for value received with interest, payable quarterly, at the rate of five per centum per annum until paid. Principal and interest payable at the office of Thos. E. Waggaman, Washington, D. C.

As collateral security for payment of the above notes there
109 are deposited with said Thos. E. Waggaman certain notes,
which are to remain in his custody, secured upon real estate,
which notes are enumerated and described in a list, known as "List
of Notes No. One," said list being also on file in the office of said
Waggaman.

SAM'L E. ALLEN, JR.

Endorsed on the back:

The principal of this note when due, and the interest as it matures, is guaranteed by

T. E. WAGGAMAN.

Interest paid to May 6, 1904.

\$50,000. WASHINGTON, D. C., *January 23rd, 1895.*

On or before two years after date I promise to pay to the order of Thomas E. Waggaman Fifty Thousand Dollars for value received, payable at the office of Thos. E. Waggaman with interest payable quarterly at the rate of Six per centum per annum until paid.

W. SEYMOUR McLEOD.

Address: ——.

Do not destroy this note as it must be shown to get release.

No. —.

Secured by list of Real Estate notes numbered one.

Endorsed on back:

Pay to the order of the Catholic University of America.

Demand, Notice and Protest waived.

THOS. E. WAGGAMAN.

The principal of this note when due, and the interest as it matures, is guaranteed by

THOS. E. WAGGAMAN.

110 Within note extended on or before Jan'y 23, 1900.
" " " " " " Jan'y 23, 1904.

Within note extended to Jan'y 23, 1907, on or before.

Interest paid to July 23, 1904.

\$48,500. WASHINGTON, D. C., *July 8th, 1896.*

On or before one year after date I promise to pay to the order of The Catholic University of America Forty-eight Thousand & Five hundred 00/100 Dollars for value received, with interest, payable quarterly, at the rate of six per centum per annum until paid. Principal and interest payable at the office of Thos. E. Waggaman, Washington, D. C.

As collateral security for the payment of the above notes there is deposited with said Thos. E. Waggaman certain notes, secured upon real estate, which notes are enumerated and described in a list, known as "List of Notes No. One," said list being also on file in the office of said Waggaman.

And in case this note, or any instalment of interest thereon, is not paid at maturity, said Waggaman has the authority, at the maturity of this note, or any time thereafter, in his discretion, without advertisement or notice, to dispose of so much of said collateral as may be necessary, and apply the proceeds thereof to the payment of this note and interest, and the remainder of said proceeds, if any, to account for to such person as may be entitled thereto.

A. C. YONSON.

Endorsed on back:

Within note extended on or before July 8, 1903.

Within note extended on or before three years from July 8, 1903, to July 8, 1906, with interest reduced to 5%.

The principal of this note when due, and the interest as it matures is guaranteed by

111

T. E. WAGGAMAN.

Interest paid to July 8, 1904.

\$40,000. WASHINGTON, D. C., *November 24, 1893.*

On or before July 10th, 1895, I promise to pay to the order of Sam'l E. Allen, Jr., Forty Thousand 00/100 Dollars for value received, with interest, payable quarterly at the rate of six per centum

per annum until paid, principal and interest payable at the office of Thos. E. Waggaman, Washington, D. C.

As collateral security I have deposited with said Waggaman note of H. P. Waggaman for \$40,000 dated July 10, 1899.

and in case this note or any instalment of interest thereon shall not be paid at maturity I hereby give the said Allen, Jr., or any person to whom this note and collateral may be transferred, full authority to sell the above described collateral, or any part thereof, immediately on the maturity of said note, or at any time thereafter, at public or private sale, in his discretion, without advertising the same or giving my any notice, and after the payment of any cost or expense of such sale to apply so much of the proceeds of said collateral as may be necessary to the payment of this note and interest and the remainder of said proceeds of sale, if any, to account for to me.

In case the proceeds of said sale shall not cover the principal and interest of this note and the expenses of sale I hold myself bound to pay any such deficiency to said Allen, Jr., or to any other person or persons to whom this note and collateral may be transferred.

E. T. KELLER.

112 Endorsed on back:

Pay to the order of the Catholic University of America.

SAM'L E. ALLEN, JR.

The principal of this note when due, and the interest as it matures, is guaranteed by—due and the interest as it matures is guaranteed by

T. E. WAGGAMAN.

Within note extended on or before November 24, 1899.

" " " " " November 24, 1903.

Interest paid to May 10, 1904.

\$15058.24/100. WASHINGTON, D. C., *March 25*", 1896.

Two years after date I promise to pay to the order of Samuel E. Allen, Jr., Fifteen Thousand and Fifty eight 24/100 Dollars for value received, with interest payable quarterly at the rate of six per centum per annum until paid principal and interest payable at the Office of Thos. E. Waggaman, Washington, D. C.

As collateral security I have deposited with said Thos. E. Waggaman a list (numbered one) of notes secured on real estates,

and in case this note or any instalment of interest thereon shall not be paid at maturity I hereby give the said Waggaman or any person to whom this note and collateral may be transferred, full authority to sell the above described collateral, or any part thereof, immediately on the maturity of said note, or at any time thereafter, at public or private sale, in his discretion, without advertising the same, or giving me any notice, and after the payment of any cost or expense

113 of such sale to apply so much of the proceeds of said collateral to the payment of this note and interest as may be necessary, and the remainder of said proceeds of sale, if any, to account for to me.

In case the proceeds of said sale shall not cover the principal and interest of this note, and the expenses of the sale, I hold myself bound to pay any such deficiency to said Allen or to any other person or persons to whom this note and collateral may be transferred.

R. L. PHILLIPS.

Endorsed on back:

Pay to the order of the Catholic University of America.

Without recourse to me.

SAM'L E. ALLEN, JR.

Demand, Notice and Protest waived.

THOS. E. WAGGAMAN.

The principal of this note when due, and the interest as it matures, is guaranteed by

THOS. E. WAGGAMAN.

Within note extended on or before three years to March 25th, 1901.

Within note extended to Sept. 25, 1904, on or before with interest payable quarterly at 5%.

Interest paid to June 25, 1904.

\$19,556.85/100. WASHINGTON, D. C., *September 6th, 1898.*

On or before three years after date I promise to pay to the order of the Catholic University of America Nineteen thousand 114 Five Hundred and fifty six 85/100 Dollars for value received, with interest, payable quarterly at the rate of six per centum per annum until paid.

Principal and interest payable at the office of Thos. E. Waggaman, Washington, D. C.

As collateral security for the payment of the above notes there is deposited with said Thos. E. Waggaman certain notes, secured upon real estate, which notes are enumerated and described in a list, known as "List of Notes No. One," said list being also on file in the office of said Waggaman.

And in case this note, or any instalment of interest thereon, is not paid at maturity, said Waggaman has the authority, at the maturity of this note, or any time thereafter, in his discretion, without advertisement or notice, to dispose of so much of said collateral as may be necessary, and apply the proceeds thereof to the payment of this note and interest, and the remainder of said proceeds if any, to account for to such person as may be entitled thereto.

CHARLES S. DRURY.

Endorsed on back:

Within note extended to Sept. 6, 1904, on or before, with interest payable quarterly at 5%.

The principal of this note when due, and the interest as it matures, is guaranteed by

T. E. WAGGAMAN.

Interest paid to June 6, 1904.

\$46,894.51/100. WASHINGTON, D. C., April 25th, 1896.

On or before three years after date I promise to pay to the order
of Thomas E. Waggaman Forty Six Thousand Eight Hun-
115 dred and ninety four 51/100 Dollars for value received, with
interest, payable quarterly at the rate of six per centum per
annum until paid, principal and interest payable at the office
of Thos. E. Waggaman, Washington, D. C.

As collateral security I have deposited with said Waggaman
A list of notes numbered one.

and in case this note or any instalment of interest thereon shall not
be paid at maturity I hereby give the said Waggaman or any person
to whom this note and collateral may be transferred, full authority
to sell the above described collateral, or any part thereof, immediately
on the maturity of said note, or any time thereafter, at public or
private sale, in his discretion, without advertising the same or giving
me any notice, and after the payment of any cost of expense of such
sale to apply so much of the proceeds of said collateral to the pay-
ment of this note and interest as may be necessary, and the re-
mainder of said proceeds of sale, if any, to account for to me.

In case the proceeds of said sale shall not cover the principal and
interest of this note, and the expenses of sale, I hold myself bound
to pay any such deficiency to said Waggaman, or any other person
or persons to whom this note and collateral may be transferred.

A. C. YONSON.

Endorsed on back:

Within note extended to Apl. 25th, 1902, on or before.

Pay to the order of the Catholic University of America.

Demand, Notice and Protest waived.

T. E. WAGGAMAN.

The principal of this note when due, and the interest as it matures,
is guaranteed by me.

T. E. WAGGAMAN.

116 Within note extended to April 25th, 1905, on or before,
interest payable quarterly at 5%.

Interest paid to July 25, 1904.

\$50,000.00/100. WASHINGTON, D. C., October 22nd, 1896.

On or before three years after date I promise to pay to the order
of the Catholic University of America Fifty-thousand 00/100 Dol-
lars, for value received, with interest, payable quarterly, at the rate
of six per centum per annum until paid. Principal and interest
payable at the office of Thos. E. Waggaman, Washington, D. C.

As collateral security for the payment of the above note there is
deposited with said Thos. E. Waggaman certain notes, secured upon
real estate, which notes are enumerated, and described in a list,
known as "List of Notes No. one," said list being also on file in the
office of said Waggaman.

And in case this note, or any instalment of interest thereon, is not paid at maturity, said Waggaman has the authority, at the maturity of this note, or any time thereafter, in his discretion, without advertisement or notice, to dispose of so much of said collateral as may be necessary, and apply the proceeds thereof, to the payment of this note and interest, and the remainder of said proceeds, if any, to account for to such person as may be entitled thereto.

LOUIS P. KELLER.

Endorsed on back:

Within note extended to Oct. 22nd, 1903, on or before.

Within note extended three years from Oct. 22/03. on or before to Oct. 22, 1906, with interest payable quarterly at 5%.

117 Interest paid to July 22, 1904.

The principal of this note, when due, and the interest as it matures, is guaranteed by

THOS. E. WAGGAMAN.

\$153,000.00.

WASHINGTON, D. C., *June 5th, 1897.*

On or before three years after date I promise to pay to the order of the Catholic University of America One hundred and fifty three thousand 00/100 Dollars, for value received, with interest, payable quarterly, at the rate of six per centum per annum until paid. Principal and interest payable at the office of Thos. E. Waggaman, Washington, D. C.

As collateral security for the payment of the above note there is deposited with said Thos. E. Waggaman certain notes, secured on real estate, which notes are enumerated and described in a list, known as "List of Notes No. One," said list being also on file in the office of said Waggaman.

And in case this note, or any instalment of interest thereon, is not paid at maturity, said Waggaman has the authority, at the maturity of this note or at any time thereafter, in his discretion without advertisement or notice, to dispose of so much of said collateral as is necessary, and apply the proceeds thereof to the payment of this note and interest, and the remainder of said proceeds, if any, to account for to such person as may be entitled thereto.

SAM'L E. ALLEN, JR.

Endorsed on back:

Within note extended to June 5th, 1903, on or before.

Within note extended for three years on or before from 118 June 5th, 1903.

The principal of this note when due, and the interest as it matures, is guaranteed by

T. E. WAGGAMAN.

Interest paid to June 5, 1904.

\$54,000.00/100.

WASHINGTON, D. C., *March 7th, 1898.*

On or before three years after date I promise to pay to the order of The Catholic University of America Fifty four thousand 00/100 Dollars for value received, with interest, payable quarterly, at the

rate of Six per centum per annum until paid. Principal and interest payable at the office of Thos. E. Waggaman, Washington, D. C.

As collateral security for the payment of the above note there is deposited with said Thos. E. Waggaman certain notes, secured on real estate, which notes are enumerated and described in a list, known as "List of Notes No. One," said list being also on file in the office of said Waggaman.

And in case this note, or any instalment of interest thereon, is not paid at maturity, said Waggaman has the authority, at the maturity of this note, or at any time thereafter, in his discretion without advertisement or notice, to dispose of so much of said collateral as is necessary, and apply the proceeds thereof to the payment of this note and interest, and the remainder of said proceeds, if any, to account for to such person as may be entitled thereto.

M. F. RILEY.

Endorsed on back:

Within note extended to Sept. 7, 1904, on or before, interest payable quarterly at 5%.

The principal of this note, when due, and the interest as it matures, is guaranteed by

T. E. WAGGAMAN.

Interest paid to June 6, 1904.

119 A large portion of the notes securing list No. 37 having been paid, this note is now secured by list No. 1.

\$41,133.71/100. WASHINGTON, D. C., November 3rd, 1894.

On or before three years after date I promise to pay to the order of Samuel E. Allen, Jr., Forty one thousand one hundred and thirty three 71/100 Dollars for value received, with interest, payable quarterly at the rate of six per centum per annum until paid, principal and interest payable at the office of Thos. E. Waggaman, Washington, D. C.

As collateral security I have deposited with said Waggaman a list of notes numbered 37, secured by real estate notes.

and in case this note or any instalment of interest thereon shall not be paid at maturity I hereby give the said Allen, Jr., or any person to whom this note and collateral may be transferred, full authority to sell the above-described collateral, or any part thereof, immediately on the maturity of said note, or at any time thereafter, at public or private sale, in his discretion, without advertising the same or giving me any notice, and after the payment of any cost or expense of such sale to apply so much of the proceeds of said collateral to the payment of this note and interest as may be necessary, and the remainder of said proceeds of sale, if any, to account for to me.

In case the proceeds of said sale shall not cover the principal and interest of this note, and the expenses of sale, I hold myself bound to pay any such deficiency to said Allen, Jr., or any other person or persons to whom this note and collateral may be transferred.

W. SEYMOUR McLEOD.

120

Endorsed on back:

Pay to the order of the Catholic University of America.
SAM'L E. ALLEN, JR.

The principal of this note when due, and the interest as it matures
is guaranteed by

T. E. WAGGAMAN.

Within note extended to Nov. 3, 1900, on or before.

Within note extended to Aug. 3, 1904, on or before with interest
payable quarterly at 5%.

Interest paid to May 3, 1904.

\$56,982.

WASHINGTON, D. C., *January 18th, 1901.*

On or before three years after date I promise to pay to the order
of The Catholic University of America Fifty six thousand nine hun-
dred and eighty-two 00/100 Dollars for value received, with interest,
payable quarterly, at the rate of five per centum per annum, until
paid. Principal and interest payable at the office of Thos. E. Wag-
gaman, Washington, D. C.

As collateral security for the payment of the above note there is
deposited with said Thos. E. Waggaman certain notes, secured on
real estate, which notes are enumerated and described in a list,
known as "List of Notes No. one," said list being also on file in the
office of said Waggaman.

And in case this note, or any instalment of interest thereon, is not
paid at maturity, said Waggaman has the authority, at the ma-
turity of this note, or at any time thereafter, in his discretion with-
out advertisement or notice, to dispose of so much of said

121 collateral as is necessary, and apply the proceeds thereof to
the payment of this note and interest, and the remainder of
said proceeds, if any, to account for to such person as may be en-
titled thereto.

C. M. COUGHLIN.

Endorsed on back:

The principal of this note when due, and the interest as it ma-
tures, is guaranteed by

T. E. WAGGAMAN.

Within note extended for three years on or before from Jan'y 18,
1904, to Jan'y 18, 1907.

Interest paid to July 18, 1904.

\$22,958 70/100. WASHINGTON, D. C., *January 6th, 1900.*

On or before three years after date I promise to pay to the order
of the Catholic University of America Twenty two thousand Nine
hundred and fifty-eight 70/100 Dollars for value received, with in-
terest, payable quarterly at the rate of five per centum per annum
until paid. Principal and interest payable at the office of Thos.
E. Waggaman, Washington, D. C.

As collateral security for the payment of the above note there is deposited with said Thomas E. Waggaman certain notes, secured on real estate, which notes are enumerated and described in a list, known as "List of Notes No. One," said list being also on file in the office of said Waggaman.

And in case this note, or any instalment of interest thereon, is not paid at maturity, said Waggaman has the authority, at the maturity of this note, or any time thereafter, in his discretion without advertisement or notice, to dispose of so much of said

122 collateral as is necessary, and apply the proceeds thereof to the payment of this note and interest, and the remainder of said proceeds, if any, to account for to such person as may be entitled thereto.

W. M. SHARKEY.

Endorsed on back:

The principal of this note when due, and the interest as it matures, is guaranteed by

T. E. WAGGAMAN.

Within note extended for three years from Jan'y 6, 1903, to Jan'y 6, 1906, on or before.

Interest paid to July 6, 1904.

\$5,000.00. WASHINGTON, D. C., November 10th, 1892.

On or before three years after date I promise to pay to the order of Thomas E. Waggaman Five Thousand Dollars for value received, payable at the office of Thos. E. Waggaman, with interest payable quarterly at the rate of six per centum per annum until paid.

CECILIA M. COUGHLIN.

Address: —.

No. —.

Secured by Deed of Trust.

Lots 1 and 2 Bl. 2 Meridian Hill.

Endorsed across face:

I hereby guarantee the payment of the within note, principal and interest March 16, 1904.

T. E. WAGGAMAN.

123 Endorsed on back:

Within note extended on or before two years to Nov. 10, 1897.

Pay to the order of the Catholic University of America.

T. E. WAGGAMAN.

Within note extended on or before one year to Nov. 10, 1898.

Within note extended to Nov. 10th, 1902, on or before.

Interest paid to May 10th, 1904.

\$5,000.00. WASHINGTON, D. C., November 10th, 1892.

On or before three years after date I promise to pay to the order of Thomas E. Waggaman Five thousand dollars for value received,

payable at the office of Thos. E. Waggaman with interest, payable quarterly at the rate of six per centum per annum until paid.

CECILIA M. COUGHLIN.

Address: ——.

No. —.

Endorsed across face of note:

I hereby guarantee the payment of within note, principal and interest, March 16, 1904.

T. E. WAGGAMAN.

Secured by Deed of Trust.

Lots 1 and 2 Bl. 2 Meridian Hill.

Endorsed on back:

Within note extended on or before two years to Nov. 10, 1897.

Pay to the order of Catholic University of America.

T. E. WAGGAMAN.

124 Within note extended to Nov. 10, 1902, on or before.

Within note extended on or before one year to Nov. 10, 1898.

Interest paid to May 10, 1904.

\$30.000. WASHINGTON, D. C., November 10, 1892.

On or before three years after date I promise to pay to the order of Thomas E. Waggaman Thirty Thousand Dollars for value received, payable at the office of Thos. E. Waggaman with interest, payable quarterly at the rate of six per cent. per annum until paid.

CECILIA M. COUGHLIN.

Address: ——.

No. —.

Endorsed across the face:

I hereby guarantee the payment of the within note, principal and interest, March 16, 1904.

THOS. E. WAGGAMAN.

Secured by Deed of Trust.

Lots 1 and 2 Bl. Meridian Hill.

Endorsed on back:

Within note extended on or before two years to Nov. 10, 1897.

Pay to the order of the Catholic University of America.

THOS. E. WAGGAMAN.

Within note extended to Nov. 10, 1902, on or before.

Within note extended on or before one year to Nov. 10, 1898.

Interest paid to Feb. 10, 1904.

125 A large portion of the notes securing list "F" having been paid, this note is now secured by List No. 1.

\$22423 40/100. WASHINGTON, D. C., October 31, 1892.

On or before one year after date I promise to pay to the order of Sam'l E. Allen, Jr., Twenty-two and four hundred and twenty-three 40/100 Dollars for value received, with interest, payable quarterly at the rate of — per centum per annum until paid, principal and interest payable at the office of Thos. E. Waggaman, Washington, D. C.

As collateral security I have deposited with said Waggaman a list of notes lettered "F" aggregating \$22,423.40 and in case this note or any instalment of interest thereon shall not be paid at maturity I hereby give the said Waggaman or any person to whom this note and collateral may be transferred, fully authority to sell the above-described collateral, or any part thereof, immediately on the maturity of said note, or at any time thereafter, at public or private sale, in his discretion, without advertising the same or giving me any notice, and after the payment of any cost or expense of such sale to apply so much of the proceeds of said collateral to the payment of this note and interest as may be necessary, and the remainder of said proceeds, of sale, if any, to account for to me.

In case the proceeds of said sale shall not cover the principal and interest of this note, and the expenses of sale, I hold myself bound to pay any such deficiency to said Allen, Jr., or any other person or persons to whom this note and collateral may be transferred.

JAMES B. NICHOLSON.

Endorsed on back:

Pay to the order of the Catholic University of America.

126

SAM'L E. ALLEN, JR.

The principal of this note when due, and the interest as it matures, is guaranteed by

T. E. WAGGAMAN.

Within note extended on or before to Oct. 31, 1897.

Within note extended on or before three years from Oct. 31, 1897, to Oct. 31, 1900.

Within note extended to Oct. 31st, 1904, on or before with interest payable quarterly at 5%.

Interest paid to July 31, 1904.

127 In the Supreme Court of the District of Columbia, Holding a District Court.

In the Matter of THOMAS E. WAGGAMAN, Bankrupt. Bankruptcy No. 361.

At the City of Washington, District of Columbia, on the 21st day of August, 1905, came George A. Dougherty, of said city and District, and made oath and says that he is Asst. and acting Treasurer of the Catholic University of America, a corporation duly incorporated under the laws in force in the District of Columbia, and

having its habitat in said District, and that he is duly authorized to make this proof in the absence from the jurisdiction of the Treasurer, and says that the said Thomas E. Waggaman, the person against whom a petition for adjudication of bankruptcy has been filed; was at and before the filing of said petition, and still is, justly and truly indebted to the said corporation in the sum of \$876,168.96, with interest on \$130,000 from the first day of August, 1904, at 6% per annum, and with interest on \$746,168.96 from the first day of August, 1904, at 5% per annum, less the sum of \$57,273.43, amount of collateral notes paid to July 24, 1905; that the consideration of said debt was money and securities turned over to said Thomas E. Waggaman by said University from time to time for the purpose of holding the same subject to the order of the said University, and for investing said funds in safe real estate securities for the benefit of said University; that instead of investing said moneys from time to time as aforesaid for the benefit of said University in the usual and regular way and according to his authority, the said bankrupt,

without knowledge or consent of the said University, and in
128 violation of his duties in the premises, and in fraud of the
rights of said University, applied said money in part to the purchase and development of real estate in the District of Columbia, the title to which was taken, not in the name of the University, but in himself and others for his benefit and commingled the residue of said moneys so received by him as aforesaid, with his own funds, and used the same for his own personal uses and benefit, he paying to the said University the interest supposed to have been earned by the investment of said moneys; that to cover up the fact that he was devoting said moneys to such unauthorized uses the said bankrupt caused the twenty five promissory notes hereinafter described to be signed by persons who were in his employ and who were of no financial responsibility, which said notes bear the endorsement thereon of said bankrupt by which he guarantees the payment of said notes, when due, both principal and interest; that no part of said debt has been paid; that there are no set-offs or counter claims to the same; and that the only securities held by said corporation for said debt are the following:

1st. Twenty five promissory notes aggregating the sum of \$876,168.96, signed by employees of said bankrupt, and with the payment thereof guaranteed by him, which said notes are filed herewith and prayed to be read as part hereof, said notes being in turn secured by various collateral notes of more or less value, delivered by said bankrupt to said corporation in the month of March, 1904, with the exception of \$32,668.55 in notes, now in the hands of his said trustee.

2nd. A bill of sale executed by said Thomas E. Waggaman and his wife, on November 22, 1901, conveying to said corporation the
paintings, drawings, pictures and curios, etc., contained in
129 the gallery of said bankrupt attached to his residence 3300 O Street, Northwest, Washington, D. C., said bill of sale being duly acknowledged and recorded on November 28, 1903, among the Land Records of the District of Columbia.

3rd. By a certain deed of trust executed on the 25th day of July, 1904, by the said bankrupt and John Ridout as trustees, conveying to George E. Hamilton and Irving Williamson, as trustees, certain tracts or parcels of land situated in the District of Columbia, and known as Woodley Park, Pretty Prospect, Woodley, and Wagga-man, *et al.*, Trustees' Addition to the City of Washington, as will more fully appear from said deed of trust which was recorded on August 22, 1904, among the Land Records of the District of Columbia, in Liber 2842, folio 13.

THE CATHOLIC UNIVERSITY OF
AMERICA,
By GEORGE A. DOUGHERTY,
Assistant and Acting Treasurer.

Subscribed and sworn to before me this 21st day of August, A. D. 1905.

[NOTARIAL SEAL.]

LOUISE F. DYER,
Notary Public, D. C.

I hereby certify that the foregoing are true and accurate copies of the notes and proof of claim filed before me on the 28th day of August, 1905, by the Catholic University of America against the estate of Thomas E. Wagga-man, Bankrupt.

ANDREW Y. BRADLEY, *Referee.*

October 14th, 1907.

130 It was thereupon stipulated between counsel that the makers of the five principal notes made after the date of the bond sued on in this cause, and heretofore introduced in evidence, were all insolvent at the time of the making of said notes, and have been so ever since, and are now insolvent.

Counsel for defendants thereupon offered in evidence answer of The Catholic University of America to the bill in chancery filed by H. Rozier Dulany, Trustee in Bankruptcy, against Thomas E. Wagga-man and others, in Equity Cause No. 25,649, to which offer plaintiff's counsel objected for the same reasons, but the objection was overruled, to which ruling of the court the plaintiff then and there excepted, and said exception was noted upon the minutes of the court. Said answer is in the words and figures following:

131 Filed April 17, 1906. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

Equity. No. 25649.

H. ROZIER DULANY, Trustee, in Bankruptcy,
vs.

THOMAS E. WAGGAMAN ET AL.

Separate Answer of the Defendant, The Catholic University of America, a Corporation.

This defendant by protestation, not admitting or confessing any of the matters and things in the Bill of Complaint alleged, by reason

of the many errors and imperfections therein contained, but expressly reserving all exceptions thereto in the same manner as if it had demurred thereto, for answer to so much and such parts of said Bill as it is advised is necessary or material for it to make answer unto, answering says:

1 to 13. This defendant believes the allegations contained in paragraphs 1 to 13, both inclusive, of said Bill of Complaint, to be true.

14 and 15. This defendant has no knowledge as to the allegations of paragraphs fourteen and fifteen of said Bill of Complaint, but it submits that the record is the best evidence of the contents of the deeds and releases therein referred to, and if the same be material, calls for strict proof thereof by the record.

16. This defendant admits the allegations contained in paragraph sixteen of said Bill, but submits that the record of said deed in trust is the best evidence of its contents.

17. This defendant avers that it has no knowledge as to the allegations of paragraph seventeen of said Bill, and that the agreement therein referred to never was made a matter of record,
132 and if the same be material calls for the production of the original of said agreement. It has been advised, however, that the equitable owners of the property described in the deed of trust from Fannie A. Moore to Waggaman and Ridout, Trustees, were Thomas E. Waggaman, John F. Waggaman and Henry P. Waggaman.

18. Answering paragraph eighteen of said Bill, this defendant has no knowledge of the execution of alleged agreements by which John F. Waggaman sold certain of his interests in the property described in said Bill, to one Benjamin K. Plain, and if the same be material calls for strict proof thereof; nor has this defendant any knowledge of the execution of an agreement on September 13, 1888, by which Henry P. Waggaman sold to said Plain an undivided one sixteenth interest in said land, and if the same be material it calls for strict proof thereof. It is advised and believes that on the 10th day of July, 1889, the said Benjamin K. Plain executed an instrument in writing assigning all of his interest in the tract of land called Woodley, to Henry P. Waggaman, for a recited consideration of \$175,000, and that on said date said Henry P. Waggaman executed an instrument in writing reciting said last mentioned assignment and the payment of \$10,000 in cash on account, and pledging all of his right, title and interest in and to said lands, howsoever acquired and in whosoever name the same might stand, to secure his four certain promissory notes bearing date the 10th day of July, 1889, said to have been given for the deferred payments of the purchase price, amounting to \$165,000, with interest at 5% per annum. This defendant further avers that one of said notes for the sum of \$40,000, and made payable two years after date, was transferred in due course
133 of business and for value, to this defendant, who became the owner and holder thereof. Said note bore across its face the following endorsement: "I hereby guarantee the payment of the within note, principal and interest—March 16, 1904—T. E.

Waggaman" and also the following endorsement "This note for value received is renewed from this date, and I promise to pay the same—March 23, 1904—H. P. Waggaman." This defendant further avers that thereafter as holder and owner of said note it instituted suit on said note on the law side of this Court, against said Henry P. Waggaman, the same being suit at law No. 47,496, and that thereafter, to wit, on the 9th day of June, 1905, judgment was entered in said case in favor of this defendant and against the defendant Henry P. Waggaman, for the sum of \$40,000, with interest thereon from the 10th day of January, 1904, besides costs of suit. Said judgment remains and is now in full force and effect, unreversed and unsatisfied.

19 to 23. This defendant has no knowledge as to the allegations contained in paragraphs nineteen to twenty-three, both inclusive, of said Bill, and if the same be material calls for strict proof thereof. This defendant is advised and believes, however, that there were other agreements than those mentioned in said paragraphs entered into between the said Thomas E. Waggaman, John F. Waggaman and H. P. Waggaman, authorizing the expenditures made by Thomas E. Waggaman in the improvement of Woodley Park.

24. This defendant has no knowledge as to the terms of the agreement referred to in paragraph twenty-four of the Bill of Complaint, although it has been informed and believes that such an agreement is in existence. It admits that at the date of said agreement the lands on the north side of the old Woodley Road were uneven and hilly and in the grading of these lands and the laying out, grading and improvement of Connecticut Avenue, Cathedral

Avenue, and other streets dedicated to public use in said 134 subdivision, large sums of money were expended, although

this defendant is not advised as to the exact amount so expended, but it denies that all or most of said funds "were provided by the said Thomas E. Waggaman by means of loans secured on the property and hereinafter more specifically referred to, and by advances from his own funds." It avers, however, that while some of the funds so used in the improvement of Woodley Park were raised by loans secured upon different portions thereof, the greater portion of the funds advanced by Thomas E. Waggaman himself were not advanced out of his own moneys, but were advanced from the funds turned over to him by this defendant for investment, which fact was not only well known to the other equitable owners of said property, but said funds were so advanced and used upon the express understanding among all of the owners of said lands that this defendant should have a lien upon said Woodley Park for the moneys so advanced and used in its improvement.

This defendant has no knowledge as to the other allegations contained in said paragraph twenty-four, and if the same be material calls for proof.

25. Answering paragraph twenty-five of said Bill, this defendant denies that the complainant "as trustee in bankruptcy of said Thomas E. Waggaman is entitled to receive from and out of the proceeds of sale of said lands the balance of \$71,796.34 so shown to

be due said Thomas E. Waggaman, with interest thereon to be paid at the rate of ten per centum per annum on the several advances made by him for the purposes aforesaid, and from the date of said advances, before any part of said proceeds is paid to any other holder of an equitable interest therein, or any payments out of said proceeds on account of said four promissory notes so as aforesaid given

135 by the said Henry P. Waggaman on the 10th day of July, 1889, to said Benjamin K. Plain, as deferred payments of the purchase money for an undivided five-sixteenths interest in the proceeds of said lands hereinbefore referred to in paragraph twenty-four of this Bill." It avers on information and belief, and therefore charges, and expects to be able to prove at the hearing of this cause, that the said \$71,796.34, or the greater part thereof, was advanced by said Thomas E. Waggaman out of the funds of this defendant which has been turned over to him for investment, and which had been used in the betterment and improvement of Woodley Park as aforesaid: and this defendant submits that because its said money was used as aforesaid in the improvement of Woodley Park it is entitled in equity to hold a lien against said property and to be paid out of the proceeds of the sale of said lands the amount so advanced and used by Thomas E. Waggaman out of its moneys, before any part of said proceeds is paid to any other holder of an equitable interest therein, or any payments out of said proceeds on account of its promissory notes executed by the said Henry P. Waggaman in favor of Benjamin K. Plain, as deferred payments of purchase money for an undivided five-sixteenths interest in said lands.

26. Answering paragraph twenty-six of said Bill, this defendant admits that said Thomas E. Waggaman paid large sums of money on account of interest due upon loans secured upon said Woodley Park, the exact amount of which this defendant is not able to say, but it denies all the other allegations of said paragraph. It avers on information and belief that a large portion of the money so paid out by Thomas E. Waggaman, on account of interest, belonged to this defendant, and had been turned over to the said Waggaman for investment, and the said payments were made from funds of this defendant with the knowledge and consent of the other equitable owners of said property, and upon the express understanding
136 as set forth in the last paragraph hereof, to-wit, that this defendant should have an equitable lien upon the ground described in these proceedings for the full amount of its funds which had been turned over to said Thomas E. Waggaman for investment, because the greater portion thereof, if not all, had been used by the owners of said property for its betterment and improvement, and in the payment of interest upon the loans secured thereon, and that said lien should take priority over all other liens, transfers, or assignments other than the deeds of trust then of record.

27 and 28. This defendant has no knowledge as to the allegations of paragraphs twenty-seven and twenty-eight of the Bill, but if the same be material, calls for proof thereof.

29. This defendant admits the allegations of paragraph twenty-

nine of said Bill, and refers for greater detail as to said \$40,000 note to paragraph eighteen of this answer.

30 to 33. This defendant has no knowledge of the allegations contained in paragraphs thirty to thirty-three of said Bill, and if the same be material calls for proof thereof.

34 to 42. This defendant has no knowledge of the allegations contained in paragraphs thirty-four to forty-two, inclusive, of said Bill, but it is informed and believes that they are true. It suggests, however, that the record of said deeds of trust in said equity proceedings are the best evidence and should be produced.

43 and 44. For answer to paragraphs forty-three and forty-four of said Bill, this defendant admits that on the 25th day of July,

137 1904, said Thomas E. Waggaman and John Ridout, Trustees, did make, acknowledge and delivered a deed of trust, conveying to the defendants George E. Hamilton and Irving Williamson, Trustees, their heirs and assigns, all of the real estate in said Bill described, "including all right, title and interest which they now possess or hold as trustees, in and to the said tracts known as Pretty Prospect, Woodley, Waggaman and Ridout, Trustees', Addition to the City of Washington, Woodley Park, whether subdivided or unsubdivided, together with all the improvements in any wise appertaining, and all the estate, interest and claim, whether at law or in equity, or otherwise, however, of the parties of the first part, of, in, to or out of the said land and premises," in trust to secure the defendant the said Catholic University, in the sum of \$876,168.96, represented by certain promissory notes of divers persons in said deed enumerated, which said Thomas E. Waggaman had made or caused to be made, and endorsed to this defendant, the Catholic University, and all of which he, the said Waggaman, had guaranteed by his written endorsement thereon.

That said notes were given at the dates in said deed of trust specified, and for moneys received by said Waggaman as Treasurer of said University, but this defendant denies that all of the said notes were given, and said guarantees made prior to 1894, as in said Bill alleged, and that "for many years prior to the making of said deed there was not, nor had there been, any advance of money, by the said University to the said Thomas E. Waggaman," but avers that while at the time of the execution of the said deed of trust no money was paid or advanced by said University, that advances had been made from time to time from 1894, to, and during 1903, and that

138 it was to secure the sum of these advances, to wit, the sum of \$876,168.96, that said deed of trust was given as additional security.

This defendant denies that the purpose and object of said deed of trust was the procurement of security for the payment of a long antecedent liability, contrary to the provisions of the bankruptcy law; or that it was given to prefer this defendant over the other creditors of said Thomas E. Waggaman; or that this defendant had reasonable cause to believe it was intended to give a preference to it; or that it was obtained and permitted while the said defendant Thomas E. Waggaman was insolvent; or that it was intended for

the purpose, on the part of Waggaman, to hinder, delay and defraud his creditors, or any of them; or that the said Thomas E. Waggaman at the time said deed of trust was executed, delivered and recorded, and for several years prior thereto, was insolvent. On the contrary this defendant avers that at various times from 1892 the said Thomas E. Waggaman, as Treasurer of this defendant, had received various sums of money, aggregating the amount hereinbefore stated, for investment; that he had given the notes described in the deed of trust hereinbefore referred to, and had given a number of collateral notes as security therefor; that he had informed this defendant repeatedly that said sums were being invested by him in the property in said Bill described, and in said deed of trust included, and secured thereon by deeds of trust, and that the money itself was being expended by him in paying off encumbrances on said property; in improving said property, and in paying interest, taxes, and other expenses connected therewith.

That prior to April, 1903, the said Waggaman had given to this defendant a typewritten statement of his indebtedness, and
139 the notes representing the same, and in this statement alleged that said indebtedness and notes were secured on said Woodley property.

That in giving said deed of trust, and at the time the said Thomas E. Waggaman stated to the representatives of this defendant, including its counsel, that the money of the Catholic University, had been used in large part in and upon said Woodley property, and that it had been so used with the knowledge and assent of the two others associated with him in the equitable ownership of said property, the legal title thereto being in himself and Ridout; that the management of this property and its direction by agreement between himself and associate equitable owners was left with him, and that in addition to the legal right of himself and Ridout to make the trust, that he controlled the interests of his brother, Pierre Waggaman, but that if it were desired he would obtain the written consent of said John F. Waggaman, who was then in Europe, to the conveyance by said Trustees. He assured this defendant, and its representatives, that he was in good financial condition, and worth over and above all liabilities at least one million of dollars; that his only objection to giving the trust was that it was for a large amount; that the public might not understand it, and that his funds being largely interested in real estate it might bring him some embarrassment, especially as he was negotiating then a sale which would enable him to pay off in large part the indebtedness to this defendant, and for this reason he asked that the deed be not recorded for ninety days, and in these statements he was supported by his attorney, Irving Williamson.

45 and 46. In answer to paragraphs forty-five and forty-six of said Bill, this defendant denies that "for many months prior to the date of said deed of trust the said Catholic University of America, its committees, officers and attorneys, had caused investigations and examinations to be made of investments made by
140 the said Thomas E. Waggaman for its account and of the

real estate holdings and general financial status and condition of the said Waggaman, by means of which examinations and investigations the said Catholic University, its officers and attorneys, acquired and had reasonable ground to believe that it was intended by said deed of trust to give said University a preference; the effect and operation whereof would be to secure to said University a greater percentage of its said debt than any other creditors of the said bankrupt in the same class with said University would or can receive out of his property and estate".

This defendant says in further answer to said paragraphs that in the spring of 1904, the said Waggaman was requested to turn over to this University all of the deeds securing notes given to the University, especially the deeds having reference to Woodley Park, and that failing to obtain these from said Waggaman, it did cause the records to be examined to see what deeds of trust had been by said Waggaman given to the University. That no investigation was made as to his general financial condition, and no knowledge obtained concerning the same, and that nothing was obtained by reason of said investigation that caused this defendant, or its officers or attorneys, to believe that said Waggaman was a bankrupt, or about to become one, or to know that he was not amply able to meet all liabilities, and that said deed of trust was not received by this defendant with any knowledge that Thomas E. Waggaman was insolvent, or that his property, at a fair valuation, would not be sufficient to pay his debts. Said trust included property whereof this defendant was and is equitable owner and it was asked for and

141 received as an additional security because of the thought and belief that the collateral notes given and already referred to were not sufficient security for so large a sum as was the sum of this indebtedness.

This defendant believes and on such belief avers that until the middle of August, 1904, the said Waggaman had no thought or anticipation of bankruptcy, and that the suggestion made by his attorney, Mr. Irving Williamson, to the attorney of the Catholic University, on August 22, 1904, that the deed of trust herein referred to had better be recorded, was made in order that said Waggaman might by his own petition, or the petition of some creditor, have a ground of bankruptcy upon which to base such petition.

Further answering said paragraphs from forty-three to forty-six, inclusive, this defendant avers that the said deed of trust included, and was intended to include, not only the interest of said Thomas E. Waggaman, but the interests of the defendants John F. and Pierre Waggaman as well, and the interests of the said two last named defendants are in no wise affected by the bankruptcy of said Thomas E. Waggaman, even if his insolvency existed at the time and prior to the execution of the deed.

47. This defendant has no knowledge of the allegations contained in paragraph forty-seven of said bill, and if the same be material calls for proof thereof by the record.

48. This defendant denies the allegations contained in paragraph forty-eight of said Bill, and it denies that the complainant is entitled

to the aid of this court in enabling him to procure the sale of all the right, title, interest and estate of all the parties to this suit in and to the real estate described therein, and it avers that this
142 court is without jurisdiction to grant such relief, and it prays that it may have the benefit of this objection in the same manner as if it had specifically demurred to said Bill of Complaint on the grounds herein set forth.

And having fully answered this defendant prays to be hence dismissed with its reasonable costs.

THE CATHOLIC UNIVERSITY OF AMERICA,
By D. J. O'CONNELL, *Rector.*

CHAS. J. BONAPARTE,
GEORGE E. HAMILTON,
Att'ys for Def't.

I do solemnly swear that I have read the foregoing answer subscribed by me as Rector of The Catholic University of America, and I know the contents thereof; that the matters and things therein stated on personal knowledge are true, and those stated on information and belief I believe to be true.

D. J. O'CONNELL.

Subscribed and sworn to before me this 19th day of February,
A. D. 1906.

[SEAL.]

LOUISE F. DYER,
Notary Public, D. C.

143 Counsel for defendants thereupon offered in evidence the answer of the University in Equity Cause No. 26,088, the same being a suit brought to set aside the bill of sale which was given by Thomas E. Waggaman to The Catholic University on his art gallery, to which offer plaintiff's counsel objected for the same reasons, but said objection was overruled, to which ruling of the court the plaintiff then and there excepted, and said exception was noted upon the minutes of the court. Said answer is in the words and figures following:

144 Filed July 17, 1906. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

Equity. No. 26088.

HENRY ROZIER DULANY, Trustee in Bankruptcy of Thomas E. Waggaman, Plaintiff,
vs.

THE CATHOLIC UNIVERSITY OF AMERICA, a Corporation, Defendant.

For answer to the bill of complaint filed in the above-entitled cause the defendant, The Catholic University of America, a corporation, respectfully states as follows:

1. It admits the allegations of the first paragraph of the bill.
2. It admits the allegations of the second paragraph of the bill.
3. Answering the third paragraph of the bill this defendant says that it does not know and has no information that will enable it to answer in what year Thomas E. Waggaman began to acquire or purchase in the United States and foreign countries an art collection, consisting of paintings in oil and water colors, prints, engravings, etchings, drawings, pottery, vases, china, ceramics, &c., and it does not know what sum or sums of money were expended by said Waggaman in the acquisition of said collection, and in so far as these allegations may be material, this defendant calls for proof thereof. This defendant does know that prior to 1901 the said Waggaman had acquired a valuable and extensive collection which was known as the Waggaman Collection, and which was located in
145 an annex to his residence No. 3300 O Street, Northwest, in the City of Washington, D. C., until it was taken therefrom by the joint action of the plaintiff and this defendant as hereinafter set forth.

4. Answering the fourth paragraph of the bill this defendant says that the said Thomas E. Waggaman, owning and possessing said art collection, did on the 22nd day of November, 1901, his wife joining therein, make, execute and deliver to this defendant an instrument in writing in the form and of the purport of a bill of sale of said art collection, absolute on its face, but intended by the parties thereto as further security for money from time to time theretofore placed by the said University in the hands of the said Waggaman, its treasurer, for investment, and amounting to about \$875,000. Said bill of sale was intended by the said Waggaman as additional security to this defendant for the faithful performance of his duties as treasurer of The Catholic University, especially with regard to the investment of this defendant's funds, which were, from time to time, turned over to said Waggaman for investment. This defendant supposes that Exhibit H. R. D. No. 1 is an exact copy of said bill of sale, but for greater certainty refers to the original instrument itself, or to the record of the same contained in Liber 2761, folio 265, of the Records of the Recorder of Deeds for the District of Columbia.

5. Answering the fifth paragraph of the bill of complaint this defendant says that it has no knowledge whatever, or information, of any agreement or understanding between said Waggaman and this defendant that said bill of sale was not to be recorded, and on information and belief denies that any such understanding or agreement was ever entered into or existed between said Waggaman and the University. Subsequent to its delivery, and in the fall of 1903,
146 the present Rector of the defendant corporation, finding that the said Waggaman had in his possession all of the securities of the University, its notes and other evidences of loans made by said Waggaman, and all the papers relating thereto, and that the said bill of sale had not been recorded, recorded the bill of sale on November 28, 1903, and subsequently requested of, and received

from, said Waggaman, the notes, deeds of trust and papers hereinabove referred to.

6. This defendant has no knowledge of the amount of the obligations incurred by the said Waggaman to divers persons, as in paragraph six of the bill of complaint alleged, and has no information in regard thereto, and it does not know when said obligations, if any, were incurred, or the aggregate amount thereof, but it denies that any of the obligations of the said Waggaman were incurred on the faith of his possession and apparent ownership of said art collection; on the contrary it avers that it was a matter of public report and publication that the said Waggaman intended to donate his said art collection and gallery to this defendant, and that such disposition by the said Waggaman of the same was generally accredited to him. Furthermore this defendant says that at the time that the said bill of sale was recorded there was no thought in the public mind but that said Waggaman, independently of said gallery and art collection, the value and cost of which was known to very few, was amply able to meet all the debts that he had contracted, or might contract or incur.

7. This defendant says that at the time of the making of said bill of sale, and until the bankruptcy of said Waggaman, he was a member of the Board of Directors of The Catholic University,

and was its treasurer, and as such was entitled, under the
147 by-laws of this defendant, to the custody of all its securities, and in fact had the custody thereof; that a transfer and delivery of possession of said art gallery from the said Waggaman individually to the said Waggaman as treasurer of the University was intended and was made, and such transfer and delivery was a transfer to this defendant. This defendant has no knowledge and no information that the said Waggaman, after said bill of sale was executed, offered for sale or sold any part of said collection, and therefore this defendant denies this allegation of the bill, and calls for proof thereof, but whether he did so or not this defendant avers that he did so, if at all, without the knowledge of this defendant and contrary to his obligations and duty under said bill of sale.

8. This defendant admits the filing of the petition in bankruptcy, as is alleged in the eighth paragraph of the bill of complaint, and the adjudication of said Waggaman as a bankrupt on the 24th day of September, 1904. It admits the subsequent election of the plaintiff as trustee of said bankrupt, and the approval of such election by the Court on the 14th day of December, 1904.

9. Answering the ninth paragraph of the bill of complaint this defendant denies that the said plaintiff ever took possession of the gallery and collection, but states that the same was put under observation by the joint act, first, of the attorneys for the petitioners in bankruptcy and this defendant, and thereafter by the plaintiff and this defendant. When the plaintiff was appointed trustee, arrangements had been made through Mr. William F. Mattingly and others, representing the principal creditors of Thomas E. Waggaman, and this defendant, for the listing of the collection, and that throughout the proceedings connected with the adjudication in bankruptcy and

148 the appointment of a trustee, the art collection of said Waggaman was regarded as a property to be jointly looked after by the creditors of said Waggaman, and this defendant. It admits the filing of the petition of the trustee in bankruptcy, asking authority to dispose of the art gallery, in which petition this defendant was made a party, and the bill of sale referred to was set forth. This defendant answered said petition, and a consent order was passed as in the ninth paragraph of the bill of complaint alleged, authorizing a sale of said collection, and directing that the proceeds should be held special, and it was further ordered that whatever lien the Catholic University might have by reason of said bill of sale, should be reserved and transferred from said art collection to the proceeds of the sale thereof.

10. This defendant admits the sale of the said art collection and gallery, and that the price realized therefrom is correctly stated in this paragraph.

11. This defendant denies absolutely that the said bill of sale was made with the intent to delay, hinder and defraud the creditors of the grantor thereof, and on the contrary this defendant avers that the creditors of said Waggaman, for the most part, received promissory notes and certificates, reciting that the amounts due them were secured on real estate represented by notes included in the List of Notes No. 1, so-called, and other lists, and that none of the said creditors relied upon, or had any reason to rely upon, the art gallery aforesaid as securing for their dealings with the said Waggaman. It denies that the bill of sale was in fraud of the rights of any creditors of the said Waggaman, and further states that said bill of sale was made three years before the bankruptcy of said Waggaman and was recorded nearly ten months before said Waggaman was adjudged a bankrupt. This defendant denies that the said

149 property could have been legally transferred or sold by the grantor after the execution of the said bill of sale, but whether it could have been or not it was not so transferred.

This defendant denies that the said property was levied upon or sold under judicial process against said Waggaman after the execution and delivery of said bill of sale, and under the facts and circumstances surrounding the giving of said bill of sale it denies that it could have been so levied upon. It denies that the grantor secretly made over to this defendant his goods and chattels, and yet kept the same in his possession, and therefore that the said bill of sale is null and void. On the contrary this defendant avers that long before the bankruptcy proceedings and long before any thought in the public mind that the said Waggaman was in financial difficulties, the said bill of sale was recorded. There was no secrecy or intended secrecy surrounding its execution and delivery to this defendant, and this defendant therefore avers that the said bill of sale is perfectly valid at law. This defendant received said bill of sale in good faith and for valuable consideration, and without any knowledge or notice of any fraudulent intent as alleged in said bill of complaint on the part of said Waggaman and it denies that there was any such fraudulent intent as alleged.

And having fully answered this defendant prays to be hence dismissed with its proper costs.

THE CATHOLIC UNIVERSITY OF
AMERICA,
By D. J. O'CONNELL, *Rector.*

CHARLES J. BONAPARTE,
HAMILTON, COLBERT AND HAMILTON,
Counsel for Defendant.

I, D. J. O'Connell, the Rector of the Catholic University of America, a corporation, do solemnly swear that I have read the foregoing answer signed by me on behalf of said University, 150 and have personal knowledge of the matters and things in said answer contained; that the matters and things therein stated on direct knowledge are true, and the matters and things stated on information and belief I believe to be true.

D. J. O'CONNELL.

Subscribed and sworn to before me this 16th day of July, A. D. 1906.

[SEAL.]

LOUIS F. DYER,
Notary Public, D. C.

Counsel for defendants thereupon called upon the plaintiff to produce the minutes of the University showing when Thomas E. Waggaman was appointed treasurer, the plaintiff having been notified to produce said minutes at the trial of this cause, to which call the plaintiff's counsel objected, on the ground of irrelevancy and immateriality, and for the further reason that the bond sued on in this cause does not appear to be given by Thomas E. Waggaman as treasurer of the University, but the court overruled the objection, to which ruling of the court the plaintiff then and there excepted, and said exception was noted upon the minutes of the court.

It was thereupon agreed by counsel that the date of the appointment of Thomas E. Waggaman as treasurer of The Catholic University was October 1, 1895.

Thereupon the defendants, to further maintain the issues on their part joined, recalled GEORGE A. DOUGHERTY, who testified as follows:

151 I have been connected with the University since 1903.

Thereupon, after due notice to produce, the counsel of the defendants requested the counsel of the plaintiff to produce the By-laws of the plaintiff for the year 1899 and down to 1904, inclusive, showing the duties prescribed by those By-laws for the Treasurer of the plaintiff, but the counsel of the plaintiff objected to the introduction of these By-laws, for the reason that they referred to the conduct of the fund by Waggaman in his character as Treasurer; and to the introduction of any By-laws adopted by the plaintiff after

the date of the bond in suit, the bond not running in the name of Waggaman as Treasurer, but as an individual.

Whereupon, the counsel for the defendants requested the counsel of the plaintiff to produce the By-laws of the plaintiff in existence at the date of the execution of the bond in suit, to which request the counsel of the plaintiff responded that they had not those By-laws.

Thereupon, counsel for the defendants requested the counsel of the plaintiff to produce the By-laws of the plaintiff, for the next year in compliance with which request, the counsel produced the By-laws of the plaintiff for the year 1900, and stated, at the time, that these were the only By-laws of the plaintiff in the possession of the counsel for plaintiff.

The defendants then offered in evidence the said By-laws of 1900, which were conceded by the counsel for plaintiff to be the By-laws of the plaintiff for the year 1900, and the plaintiff objected 152 at the time, to the introduction of the said By-laws, for the reasons last above mentioned, but the objection of the plaintiff was overruled by the Court, to which ruling the plaintiff then and there excepted, and the exception was noted upon the minutes of the court.

Said By-laws are in part in the words and figures following:

SECTION VII.

Of the Treasurer.

The Treasurer shall receive all moneys paid to the University and belonging thereto, whether the same be capital or income, and shall duly receipt therefor. He shall securely invest with the consent of the Chancellor and the Rector all capital to the best advantage, both as regards safety and profit, and shall apply the income to the promotion of the work of the University according to the directions which he may from time to time receive from the votes of this corporation. He shall give a bond in the sum of \$200,000 for the faithful discharge of his duties, and shall do such other acts as are or may be prescribed by the Charter, the General Constitutions, or the By-laws."

Thereupon the defendants, to further maintain the issues on their part joined, recalled J. F. CAIN, who testified as follows:

I have been connected with the University since 1889 as book-keeper. I could not say whether there has been any change or not in the by-laws of the Catholic University with relation to the 153 duties of treasurer since 1899. The only thing I remember is, that I have seen these By-laws for some years. I don't know whether there were any changes or not, but the minute book will show. I did not hear of any changes from 1899 to 1900. I have read section 7 of the by-laws of 1900, but cannot state if that section was in operation in 1899.

Thereupon the defendants for the first time read to the jury section 7 of the by-laws of 1900 in evidence, to the reading of which

plaintiff's counsel objected for the reasons aforesaid, but the objection was overruled, to which ruling of the court plaintiff then and there excepted, and said exception was noted upon the minutes of the court.

The WITNESS: Bishop Thomas J. Conaty was Rector of the University in the year 1902. Bishop Philip J. Garrigan was vice-rector in 1902. Bishop Conaty ceased to be rector in April 1903, I think April 14th or 15th, and he was succeeded by Bishop D. J. O'Connell, who is at present rector. Bishop Garrigan was vice-rector about October 10, 1899.

Thereupon counsel for defendants offered in evidence letter from Thomas E. Waggaman to the Right Rev. D. J. O'Connell dated March 8, 1904, to which offer the plaintiff's counsel objected on the ground of irrelevancy, and on the further ground that it does not specify what notes are to be turned over to the University, but the objection was overruled, to which ruling of the court plaintiff then and there excepted, and said exception was noted upon the minutes of the court. Said letter is in the words and figures following:

"MARCH 8, 1904.

Rt. Rev. DEAR SIR: The notes are now all ready to be
154 turned over. There are some few minor differences between
the records in my office and your book, which I would like
to have adjusted, and if you will let your secretary, Father Dough-
erty, and Mr. Cain come in they can be fixed in a very short time.

Asking your prayers, I remain,
Yours very sincerely,

THOMAS E. WAGGAMAN.

Rt. Rev. D. J. O'Connell, Rector The Catholic University."

Counsel for plaintiff produced under previous notice, a duplicate original of a book, which they admitted to be such, containing a list of the notes securing, or purporting to secure, the twenty-five notes hereinbefore mentioned.

Thereupon the defendants recalled R. T. ROBINSON, who testified as follows:

The book which you hand me is one of the books that was found in Thomas E. Waggaman's office and turned over to Mr. Dulany as trustee. It purports to be a duplicate book, containing a list of notes securing or purporting to secure the twenty-five principal notes representing the \$876,000 received by Thomas E. Waggaman from the University.

Counsel for defendants thereupon offered said book in evidence, to which offer plaintiff's counsel objected on the ground that it was irrelevant and immaterial, but the objection was overruled, to which ruling of the court the plaintiff then and there excepted, and said exception was noted upon the minutes of the court.

155 Thereupon the defendants recalled the witness CLEMENTINE WAGGAMAN, who testified as follows:

I have seen this duplicate book which is marked "C. U." before.

Q. What do you know about what has been so frequently mentioned in this case as List of Notes No. 1 in Mr. Waggaman's office?

to which question counsel for plaintiff objected on the ground of irrelevancy and immateriality, but the objection was overruled, to which ruling of the court the plaintiff then and there excepted, and said exception was noted upon the minutes of the court, and it was further understood that said objection by plaintiff's counsel should apply to all the testimony of this witness concerning List of Notes No. 1.

The WITNESS: List No. 1 was composed of notes that Mr. Waggaman invested for people who left their money there; and as security he offered different notes as collateral. There were so many notes in List No. 1 in November 1903 that I could not give you the number. They were very numerous.

The Witness was thereupon asked the following question:

Q. Mrs. Waggaman, do you know when it was that certain notes were taken out of List No. 1 and turned over to the Catholic University?

to which question plaintiff's counsel objected, but the objection was overruled, to which ruling of the court the plaintiff then and there excepted, and said exception was noted upon the minutes of the court.

The witness then answered the question:

A. Sometime in the fall of 1903. I selected the notes from 156 List No. 1 and turned them over to the Catholic University at the direction of either Mr. Williamson or Mr. Thomas E. Waggaman. The notes were given to Mr. Cain and Father Dougherty at Mr. Waggaman's office. They had nothing whatever to do with the segregation of these notes from List No. 1. The notes mentioned in the book "C. U." are collateral notes, and this book contains a list of notes that were separated from List No. 1 and turned over to Mr. Cain and Father Dougherty for the University.

On cross examination the witness said:

My impression is that the collateral notes were turned over to the University in 1903, and the principal notes in 1904. My recollection is that it was either in 1903 or the early part of 1904 that the collaterals, the notes that are in that book, were turned over but I am not certain about it. I kept a record of the notes held in Waggaman's office as collateral, but I seldom credited the interest on them. When the University turned over any sum of money to Waggaman for investment, he would deposit it in bank to his own credit, and then make a dummy note, signed by some clerk in his office, and put it in List No. 1. That is the way the matter was conducted.

Q. He would use money for his own purposes for the purchase of real estate, or anything he saw fit? Is not that true? A. I was only the note clerk.

157 Q. Don't you know that to be the fact, Mrs. Waggaman?
A. I do not.

Q. Was there ever anything in the records of that office to show that anything else was done by Mr. Waggaman with these amounts of money making up the \$876,000 except to put it to his own individual credit? A. When I took the money for investment after it went to the bank and the investment was made, I never had anything more to do with it.

Q. You never took the money did you? A. No.

Q. You never had possession of the money? A. No.

Q. Don't you know of your own knowledge that the moneys Mr. Waggaman received from the University were placed to his own credit in bank, and a dummy note was made and put in this list? A. Yes.

Q. Is not that true, Mrs. Waggaman? A. Yes.

Thereupon the defendants again recalled J. F. CAIN, who testified as follows:

The collateral notes described in the book "C. U." were turned over to the University in the early part of March 1904. The principal notes were turned over at the same time.

Thereupon the defendants recalled CECILIA M. COUGHLIN, who testified as follows:

On page 450 of the book marked "C. U." there is a list 158 of the notes that belonged to the Catholic University. I made the entry on that page as follows "The amount of notes hereinbefore enumerated is on this date \$876,168.75, June 1, 1902." I am positive I made that entry on June 1, 1902.

On cross examination the witness said:

I made up this book at the direction of Mr. Irving Williamson, the attorney for Mr. Waggaman. Some of the entries following the one just quoted are in my handwriting. I saw the notes after, but whether they were retained or not in Mr. Waggaman's office after June 1, 1902 I cannot say. It was my duty to make entries of credit on these notes as the interest was paid. This book shows the notes that belonged to the University. I don't think I had these notes in my possession at the time I made the entry of January 19, 1903 in this book. That information was dictated to me by Mr. Williamson. The entries of March 7, 1904 are in my handwriting. I do not know if at the time I made these entries the notes were in Mr. Waggaman's office. I made the entries as they were dictated to me. Sometimes I was handed a jacket but I did not see the notes. The jackets had the information on them and sometimes they contained the notes, but I did not look inside of them.

Thereupon the defendants recalled J. F. CAIN for further examination.

The book which you hand me marked "C. U." is the duplicate book of collateral notes which book was kept at the University.

The entries in that book subsequent to January 13, 1903 are in my handwriting. The last entry in my handwriting was May 16, 1904, and the first entry is January 14, 1903. As bookkeeper I made the entries in this book.

159 On cross examination the witness said:

I made the entries in this book from January 1903 until March 1904 as the result of information obtained from statements sent to the University by Mr. Waggaman from time to time. I did not have possession of the notes when those entries were made. Mr. Waggaman would notify the University that such and such payments had been made upon certain notes, and I would enter a credit on this book according to the statement sent by Mr. Waggaman. They are simply entries made by me on information that Waggaman furnished.

On re-direct examination the witness said:

Waggaman would make written statements of moneys received by him and invested in real estate. I do not know if the University ever went to him and asked him where the real estate was in which his statement showed the money had been invested. It could have been done, but I don't know of it. I don't know whose handwriting is on the statement which you hand me. It is probably the handwriting of somebody in Mr. Waggaman's office.

Thereupon the defendants recalled Mrs. CLEMENTINE WAGGAMAN, who identified the statements shown the preceding witness as being in her handwriting.

Counsel for defendants thereupon offered said statements in evidence to which offer the plaintiff by its counsel then and there objected on the ground of irrelevancy and immateriality, but the objection was overruled, to which ruling of the court the plaintiff then and there excepted, and said exception was noted upon the minutes of the court. Said statements are in the words and figures following:

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WASHINGTON, D. C., *January 6th, 1900.*

47.

Thos. E. Waggaman, Real Estate Broker and Auctioneer, No. 917 F Street N. W., in Account With Thos. E. Waggaman, Treas. the Catholic University of America.

1898.

Oct. 28. Held for investment (The Catholic Young Men's Union Scholarship).	\$1,000.
One year's interest to Oct. 28/99 on \$1000.....	60.

1899.

Nov. 1. Check for interest on above.....	\$60.
Interest at 5% from Oct. 28/99 to date.....	9.72
Sept. 6. Recd. from Peabody Estate.....	618.70
Interest at 5% from Sept. 6/99 to date.....	10.37

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Oct. 25.	Held for investment (The Mary Moran Bequest for the Kitie Department).....	\$10,000.00
	Interest at 5% from Oct. 25/99 to date	101.39
Dec. 23.	Held for investment (Michael Murphy General Endowment Fund)..	5,000.
" 23.	Held for investment, Most. Rev. J. J. Williams chair.....	6,340.
	Check of Rev. C. M. M. Donnelly returned, protest fee on same.....	\$101.70
	Interest on \$11,240 from Dec. 23/99 to date.....	21.85
1900.		
Jan. 5.	Check recd. for investment Eliza P. Dean for the Arb. Williams Chair.....	100.
161	47.	
1900.		
Jan'y 5.	One day's interest on \$100.....	.01
Jan'y 6.	Loan to W. M. Sharkey on or before three years, secured by Real Estate notes, interest payable quarterly at 5%.....	\$22,958.70
	Balance per check to the Catholic University of America.....	141.64
		\$23,262.04
		\$23,262.04

Note in above transaction held at office for collection of interest and principal.

THOS. E. WAGGAMAN, T.

162 WASHINGTON, D. C., *July 17th, 1900.*

54.

Thos. E. Waggaman, Real Estate Broker and Auctioneer, No. 917 F Street N. W., in Account with Thos. E. Waggaman, Treas. The Catholic University of America.

1900.		
Jan. 10.	Held for investment Caldwell Memorial Fellowship.....	\$5,000.
	Int. from Jan. 10th 1900 to date at 5%.....	129.86
20.	Held for investment General Endowment fund.....	1,000.
	Int. from Jany. 20th 1900 to date at 5%	24.58

	25. Held for investment Gen'l Endowment fund.....	\$450.00
	Int. from Jany. 25th to date at 5%	10.81
Feby. 27.	Held for investment Gen'l Endowment fund.....	1,770.
	Interest from Feb. 27th to date at 5%	34.66
March 2.	F. H. G. White, notes paid.....	8,000.
	Int. at 6% from Feb. 10 to March 2nd.....	26.66
	Int. at 5% from Mar. 2nd to date.....	150.
	26. Held for investment Abp. Kendrick Chair.....	1,000.
	Int. from March 26th to date at 5%	15.41
Apr. 3.	Held for investment General Endowment fund.....	305.
	Interest from April 3rd to date at 5%	4.39
163	54.	
Apr. 16.	Held for investment Abp. Kendrick Chair.....	2,383.
	Int. from April 16th to date at 5%	29.78
30.	Held for investment Abp. Kendrick Chair.....	1,250.
	Int. from April 30th to date at 5%	13.54
30.	Held for investment Abp. Kendrick Chair (Check dated May 20th 1900).....	1,000.
	Int. from May 20th to date at 5%	8.05
30.	Held for investment General Endowment fund.....	1,125.
	Int. from April 30th to date at 5%	12.17
July 17.	Loan to L. L. Nicholson, Jr., on or before 3 years, secured by Real Estate notes, interest payable quarterly at 5%	\$23,283.
	Check in settlement for interest to the Catholic University of America.....	459.91
		\$23,742.91
		\$23,742.91

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WASHINGTON, D. C., *Feby. 8th, 1901.*

54.

Thos. E. Waggaman, Real Estate Broker and Auctioneer, No. 917 F Street, N. W., in account with Thos. E. Waggaman, Treas. The Catholic University of America.

1900.

Sept. 24. Held for investment General Endowment Fund	\$1,000.
Int. at 5% from Sept. 24, 1900, to Jany. 18, 1901	15.97
Nov. 12. Held for investment the Bishop Conroy Scholarship of the diocese of Albany, N. Y.....	5,000.
Int. at 5% from Nov. 12, 1900, to Jany. 18, 1901	46.53
1901.	
Jany. 18. M. G. Soleau note paid due Nov. 5, 1900, secured by Real Estate notes,.....	50,982.
Int. at 6% from Nov. 5, 1900, to Jany. 18, 1901	628.77
Jany. 18. Loan to C. M. Coughlin, note dated Jany. 18, 1901, on or before three years, secured by Real Estate notes, interest payable quarterly at 5%	\$56,982.
Balance per check.....	691.27
	\$57,673.27
	\$57,673.27

The note in above transaction is held at office for collection of interest and principal.

THOS. E. WAGGAMAN, T.

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WASHINGTON, D. C., *August 6, 1901.*

Thos. E. Waggaman, Real Estate Broker and Auctioneer, No. 917 F Street, N. W., in account with Thos. E. Waggaman, Treas. The Catholic University of America.

1901.

Feby. 12. Held for investment at 5% Gen'l Endowment fund.....	\$4,135.
Interest at 5% from Feby. 12th to Aug. 6, 1901.....	101.06
27. Held for investment for the Archbishop Williams Chair.....	500.
27. Held for investment for the Rev. Dr. Burtsell Burn.....	4,500.
Int. on \$4500 from Feby. 27 to Aug. 6th, 1901, at 5.....	100.62

March 7.	Held for investment for Walde- man Conrod, Baron, Von Zed- entz, Scholarship for diocese of Puma.....	\$5,000.
	Int. at 5% from March 7th to Aug. 6, 1901.....	104.17
12.	Held for investment (towards en- dowment of Abp. Kendrick Chair)	2,000.
	Int. from March 12th to Aug. 6, 1901, at 5%.....	40.27
May 17.	Held for investment, the balance of the Andrews Chair.....	20,000.
	Interest from May 17th to Aug. 6, 1901.....	225.
August 6.	Loan to Sam'l E. Allen, Jr., for three years on or before secured by Real Estate notes, interest payable quarterly at 5%.....	\$35,635.
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August 6.	Balance per check to the Cath- olic University	571.12
		<hr/>
		\$36,206.12
		<hr/>
		\$36,206.12

The note in above transaction is held at office for collection of interest and principal.

THOS. E. WAGGAMAN, T.

167 It was thereupon stipulated by and between counsel that Thomas E. Waggaman was adjudged a bankrupt in Bankruptcy Cause No. 361 on the 26th day of September, 1904.

Thereupon the defendants, to further maintain the issues on their part joined, called as a witness CLARKE WAGGAMAN, who testified as follows:

I am a son of Thomas E. Waggaman and the grand-son of Dr. Daniel B. Clarke, the surety on the bond in suit. He was my mother's father. John Lenthall Waggaman was the son of Thomas E. Waggaman. I think he is insolvent.

On cross examination the witness said:

John Lenthall Waggaman is my half brother. He is a son of Thomas E. Waggaman by his first marriage. My full name is Daniel B. Clarke Waggaman, and I am one of the executors of Dr. Clarke's will.

Thereupon defendants offered in evidence a report of the Rector of the Catholic University as to its financial condition, to which offer plaintiff's counsel objected on the ground of irrelevancy and because said report makes no distinct reference to any of the notes referred to in these proceedings, but the objection was overruled, to which

ruling of the court the plaintiff then and there excepted, and said exception was noted upon the minutes of the court. Said report is in the words and figures following:

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Cover.

Personal and Private.

DEUS LUX MEA.

STATEMENT

OF

THE FINANCIAL CONDITION

OF

THE CATHOLIC UNIVERSITY OF AMERICA.

FROM ITS BEGINNING

TO NOVEMBER FIRST, 1903.

Washington, D. C.

1903.

168½

First Page.

Personal and Private.

DEUS LUX MEA.

STATEMENT

OF

THE FINANCIAL CONDITION

OF

THE CATHOLIC UNIVERSITY OF AMERICA.

FROM ITS BEGINNING

TO NOVEMBER FIRST, 1903.

Washington, D. C.

1903.

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Private and Personal.

Mr. Thos. E. Waggaman, Wash., D. C.:

In fulfillment of the promise made by His Eminence, the Chancellor, in his circular letter of November the 12th last past, I have the honor to submit to you a statement of the financial condition of The Catholic University of America, from the time of its first beginning down to the first day of last November.

It has been my aim to make the statement as thorough and as simple as possible, and to omit nothing that would help to a clear understanding. If, however, it should still appear vague or incomplete to any one, in any respect, it would afford me pleasure to furnish any further information on demand.

In order to confine myself entirely to the domain of fact, I have intentionally abstained from any allusion to various donations and legacies that can, with all reason, be confidently expected to be paid in within a comparatively short period; nor have I desire to give any color to the exposition, by any expectations borrowed from the probable results of the recent Papal collection.

However, I think that all things considered, the financial condition of the University is such as to guarantee the gratifying assertion that the University has finally triumphed over all the obstacles that stood in its way, and that a future awaits it, full of usefulness and of glory to the Church in America.

With profound respect,

I have the honor to be

Your obedient servant in Christ,

D. J. O'CONNELL, *Rector.*

The Catholic University of America, December 18, 1903.

170 *Financial Statement of the Catholic University of America, Covering the Administration From the Time of the First Business Transaction, May 9th, 1885, to November 1st, 1903, a Period of Eighteen Years and Six Months.*

Receipts.

Donations and Bequests:

Miss Mary Gwendolin Caldwell, Newport, R. I.....	\$310,000.00
Rt. Rev. Mgr. James McMahon, New York, N. Y.....	225,436.60
Col. P. B. O'Brien, New Orleans, La.....	150,000.00
Mr. Albert F. Ryan, Norfolk, Va.....	105,427.55
Mr. Joseph Banigan, Providence, R. I.....	60,000.00
The Misses Andrews, Baltimore, Md.....	56,000.00
Mr. Michael Cudahy, Chicago, Ill.....	52,500.00
The Misses Drexel, Philadelphia, Pa.....	50,000.00
Hon. Miles P. O'Connor, San Jose, Cal.....	50,000.00
Mrs. Celinda B. Whiteford, Baltimore, Md.....	50,000.00
The Ancient Order of Hibernians of America.....	50,000.00
Miss Lina Caldwell, Newport, R. I.....	50,000.00
Mr. Eugene Kelly, New York, N. Y.....	50,000.00
Mrs. Eugene Kelly, New York, N. Y.....	50,000.00
Mr. Patrick Quinn, Philadelphia, Pa.....	36,556.44
Collection, "1897".....	35,249.58
Catholic Total Abstinence Union of America.....	25,000.00
Archbishops and Bishops, subscribers to fund termed "Bishops' Fund" to liquidate debt.....	20,358.38
Miss Rebecca Reyburn, Baltimore, Md.....	19,920.00
Mrs. Mary D. Peabody, Washington, D. C., real estate, valued at.....	17,500.00
Amount carried forward.....	\$1,463,948.55

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Amount brought forward.....	\$1,463,948.55
Mr. Timothy Riordan, Baltimore, Md., legacy.....	16,590.01
For Archbishop Kendrick Chair	11,783.00
Mrs. Miles P. O'Connor, San Jose, Cal.....	10,000.00
Mrs. A. R. Reynolds, Philadelphia, Pa.....	10,000.00
Rev. Thomas Brehony, Wilkesbarre, Pa.....	10,000.00
Miss Anna Hope Hudson, Washington, D. C.....	10,000.00
Charles N. Routt, Esq., Alton, Ill.....	10,000.00
Mr. David T. Leahy, Brooklyn, N. Y.....	9,500.00
Mt. Rev. Archbishop Hennessey, Dubuque, Iowa.....	8,265.41
Messrs. Leopold Huffer & Sons, Paris, France.....	8,000.00
For Archbishop Williams' Chair.....	7,640.00
Mr. Thomas E. Waggaman, Washington, D. C.	7,000.00
Rt. Rev. Bishop Conroy, Albany, N. Y.....	5,000.00
Messrs. Benziger Brothers, New York, N. Y.....	5,000.00
Mr. O. Andrews, Baltimore, Md.....	5,000.00
Mrs. Eliza P. Blight, Philadelphia, Pa.....	5,000.00
Brooklyn Memorial Committee, Brooklyn, N. Y.....	5,000.00
Mrs. Ruth Charlotte Dana, Boston, Mass.....	5,000.00
Mrs. Emily Harper, Baltimore, Md.....	5,000.00
Mr. Michael Jenkins, Baltimore, Md.....	5,000.00
Mr. Sylvester Johnson, Louisville, Ky.....	5,000.00
Rev. Dr. J. Lambert, Laconia, N. H.....	5,000.00
Rev. P. J. Lavin, Necedah, Wis.....	5,000.00
General John Lawlor, Prairie-du-Chien, Wis.....	5,000.00
	<hr/>
	\$1,642,226.97

172 Amount brought forward..... \$1,642,226.97

Rev. E.W. J. Lindersmith, Roots-	
town, Ohio	\$5,000.00
Rev. Dwight Lyman, Govanstown, Md..	5,000.00
Duke Joseph de Loubat, New York, N.Y.	5,000.00
Miss Winefred Martin, Baltimore, Md...	5,000.00
Mr. John McCaffery, Albany, N. Y.....	5,000.00
Mrs. Mary Moran, Baltimore, Md.	5,000.00
Mr. Michael Murphy, Chicago, Ill.....	5,000.00
Rev. W. A. Nolan, Butler, Pa.....	5,000.00
Mr. James F. Sinnott, Philadelphia, Pa..	5,000.00
Mrs. Staley, Baltimore, Md.....	5,000.00
Mr. James Walsh, Baltimore, Md.....	5,000.00
Rev. J. J. Doherty, Hernsdale, Pa.....	4,750.00
Mr. Andrew Dougherty, New York, N.Y.	4,750.00
Miscellaneous gifts of smaller sums.....	250,525.60
	<hr/>
	355,025.60
	<hr/>
	\$1,957,752.57

173 Amount brought forward..... \$1,957,752.57

Income:

Interest on investments.....	\$545,068.90
Tuition	98,602.65
Rents, including rents from rooms Keane Hall.	20,552.82
Farm, proceeds sale produce, etc.....	8,864.38
For use of light.....	2,029.34
Sundries.....	14,215.79

From following funds, credited to Income Account, viz.:

Divinity Fund Association... \$24,325.00	
University Fund Association. 32,005.00	
Chapel Fund Association.... 8,750.80	
Guarantee University Fund. 3,431.01	
	68,511.81
	757,845.69

Total receipts..... \$2,715,598.26

Money Borrowed at Date:

Mutual Benefit Life Insurance Co., Newark, N. J., secured by first mortgage on University buildings and grounds, bearing interest at four per cent.....	\$165,000.00
Due local banks, bearing interest at five per cent.....	35,500.00
	200,500.00
Due for salaries credited, not paid.....	733.33
	201,233.33
	2,916,831.59

174 Investments:

Amount invested in mortgages secured on real estate, Washington, D. C., account the following Endowments:

Caldwell Hall.....	\$404,750.00
McMahon Hall	338,550.00
Caldwell Hall Scholarships.....	91,265.41
McMahon Hall Fellowship.....	10,000.00
McMahon Hall Scholarships.....	2,175.55
Caldwell Memorial Fellowship.....	5,000.00
Archbishop Kenrick Chair.....	11,783.00
Archbishop Williams Chair.....	7,640.00
Sundry Endowments.....	10,005.00
	\$881,168.96

Other Assets:

Philadelphia and Reading Railroad Bonds.....	\$10,000.00
Real Estate, located Eighth and G Streets, N. W., Washington, D. C., estimated net value.....	12,000.00
Bond and mortgage, secured on U. S. Hotel property, Long Branch, N. J....	27,000.00
Real Estate, Omaha, Neb., bequest of Miss Peabody, for endowment of Scholarships.....	17,500.00
Bills receivable, deferred payment on real estate sold.....	1,500.00
Amount advanced Peabody Estate	673.97
Eckington and Soldiers' Home Railway Company stock, valued at.....	1,000.00
Accounts outstanding.....	460.15
Amount held by His Eminence James Cardinal Gibbons for investment, received from Timothy Riordan estate..	16,590.01
Cash on hand and in bank, November 1, 1903.....	3,616.98
	90,341.11
Amount carried forward.....	\$1,729,208.72
175 Amount brought forward.....	\$1,729,208.72

Expenses:

Salaries, Faculty and Administration...	\$598,215.20
Wages of help, care of buildings.....	44,402.96
Provisions.....	122,123.27
Annuities	38,735.67
Repairs and improvements.....	31,995.73
Fuel.....	41,941.08
Farm, care of stock, care and improvement of grounds.....	47,201.24
Interest.....	44,300.41
Stationery, printing and postage.....	20,509.85
Chapel	11,655.76
Insurance and taxes.....	10,798.73
Light.....	9,685.87
Traveling	8,783.43
Lectures.....	5,656.64
Freight, express and customs.....	4,008.04
Advertising	4,437.94
Sundries.....	33,542.10
	\$1,077,993.92
Extraordinary expenses—furniture, books for libraries, and equipment.....	109,628.95
	\$1,187,622.87
	\$2,916,831.59

From the foregoing statement it will appear we owe.....	201,233.33
And have assets to meet same amounting to.....	56,251.11
Net debt November 1, 1903.....	\$144,982.22

176 This was all the evidence offered on behalf of the defendants.

Whereupon the plaintiff, to further maintain the issues on its part joined, called in rebuttal GEORGE A. DOUGHERTY, who testified as follows:

The extension endorsed on the back of L. L. Nicholson's note for \$23,283 is in a handwriting which I do not know. I don't know when that endorsement was put on the note, but it was on the note at the time it was delivered to me, about March 10, 1904. I do not know by whose direction it was made. This extension was not to my knowledge endorsed on the note by the direction or with the knowledge of anybody connected with the University. I do not know the handwriting of the extension endorsed on the back of the note of W. M. Sharkey for \$22958.70. That extension was on the note when I received it in March, 1904, but I do not know by whose direction it was put there. It was not put there by the direction of the University or any of its officers to my knowledge. None of the extensions on any of the five notes offered in evidence were made to my knowledge by the direction or with the knowledge of the University. The report of the Committee from which it appeared that Thomas E. Waggaman had loaned the University money to himself, which report is referred to in the agreement between Thomas E. Waggaman and the Catholic University, dated July 13, 1904, and offered in evidence by the defendants, was an oral report, made to the Board of Trustees of the University about May 15 or 17, 1904. The Committee was composed of Mr. George E. Hamilton and Mr. Charles J. Bonaparte.

177 Thereupon the witness was asked the following question :

Q. Did you have any knowledge or did the University have any knowledge prior to the report of that Committee that Thomas E. Waggaman had loaned the moneys of the University to himself?

to which question counsel for the defendants then and there objected and the objection was sustained, to which ruling of the court the plaintiff then and there excepted, and said exception was noted upon the minutes of the court.

The WITNESS: I had no knowledge before that Committee reported to the Trustees that Thomas E. Waggaman had loaned the moneys of the University to himself. I had no information, knowledge or intimation at all on March 10, 1904, when the notes were turned over to me that Thomas E. Waggaman was insolvent or in financial straits. On that date I knew that makers of some of the

principal or dummy notes were employed in his office, but I did not know anything about their financial condition at all.

On cross examination the witness said:

In 1904 I lived at the Catholic University, and to my knowledge no official of the University knew anything about the extensions endorsed on the notes which have been offered in evidence. Thomas E. Waggaman was the treasurer of the University and prior to March 10, 1904, these notes were in his possession. I can not say anything about Mr. Waggaman's knowledge as to the extensions on these notes. In saying that no official of the University consented to the extension I had supposed that we were not dis-

178 cussing Mr. Waggaman. The Committee referred to was composed of Mr. George E. Hamilton, Mr. Charles J. Bonaparte, and Mr. Michael Jenkins, of Baltimore. I was not present when they reported but Mr. Hamilton told me about the report.

Thereupon counsel for defendants moved the court to instruct the jury to disregard the statement made by the witness as to the fact of any report having been made and whether it was oral or written when made, which motion was granted.

Whereupon the plaintiff, to further maintain the issues on its part joined, called in rebuttal IRVING WILLIAMSON, who testified as follows:

I was perfectly familiar with some of the clerks of Mr. Waggaman's office, and with some of his business. The endorsement made on the back of the note of L. L. Nicholson, Jr., of July 17, 1901, for \$23,283 "within note extended on or before three years to July 17, 1906," is in the handwriting of Miss Rose Phillips, who was a clerk in the office. The endorsement on the back of the note of W. M. Sharkey of January 6, 1900, for \$22,958.70 "within note extended for three years from January 6, 1903, to January 6, 1906, on or before" is in the handwriting of Mrs. Clementine Waggaman, a clerk in the office. The endorsement on the back of the note of C. M. Coughlin, dated January 18, 1901, for \$56,982 "within note extended for three years on or before from January 18, 1904, to January 18, 1907," is I believe in the handwriting of Mrs. Clementine Waggaman.

No cross examination.

179 Whereupon the plaintiff, to further maintain the issues on its part joined, called in rebuttal D. J. O'CONNELL who testified as follows:

I have been Rector of the Catholic University since April, 1903. I was present at the meeting in May, 1904, of the Trustees of the University when Mr. Bonaparte and Mr. Hamilton appeared before the Trustees and made a statement regarding the condition of the investments of the University money. They explained the situation to the Trustees orally, and made no written report.

Q. Did you know before that time that Waggaman had loaned this money to himself? A. I cannot say that I ever realized that Mr. Waggaman had loaned this money to himself, or that I had ever

seen a distinct statement of it, before I read it in that agreement, drawn up, and subsequent to that meeting in May. When I read that agreement for the first time I paused at that expression, because I was surprised and a little pained, and I thought it would be a surprise to all of the members of the Board.

The WITNESS: When the notes came into the possession of the University on March 10, 1904, I had no knowledge at that time that Mr. Waggaman was insolvent or in financial difficulty. I was not present when the notes were turned over to Father Dougherty by Mr. Waggaman, but they were brought by Father Dougherty from the office of Mr. Waggaman to the University and placed in the

University vault for keeping. So far as I can remember
180 there was no agreement of any kind made with Mr. Waggaman about the delivery of these notes to the University. I had a conversation with him once about the general financial situation. That was some three or four months prior to the delivery of the notes. During that conversation I really do not think that such an idea as an agreement to accept these notes in payment of Waggaman's obligations to the University was entertained on one side or the other. Such an idea was not expressed and I do not think it was thought of on either side.

On cross examination the witness said:

I think the conversation which I had with Mr. Waggaman took place in the early half of November, 1903. Mr. Hamilton and Mr. Bonaparte, when they appeared before the Board of Trustees and made a statement in May, 1904, were acting as counsel for the Trustees and one of them was likewise a member of the finance committee of the University. The Finance Committee at that time as well as I remember, was composed of Michael Jenkins, Charles J. Bonaparte, Thomas E. Waggaman and the Rector. I do not know if I could say exactly, in strict words, that the committee had been appointed, early in 1904, but it is my impression that counsel was appointed early in 1904, and requested or authorized to inquire into the condition of the securities of the University. I remember that on one occasion Mr. Michael Jenkins was appointed a member of a special committee, with direction to investigate and report upon

the condition of the investments of the University but the
181 date of his appointment I did not think much about, the date when he did that I considered of secondary importance. I remember that about January counsel was named and authorized to proceed, and it would appear that Mr. Michael Jenkins was a member of the special committee at that time. A report was made by the special committee to the Trustees in the month of May. The gentlemen who made the report were Mr. Bonaparte and Mr. Hamilton. Mr. Hamilton was assistant counsel of the University, and I think Mr. Jenkins being a trustee of the University, and one of the directors, was present when the report was made. I have no knowledge of any report made to the Trustees before the month of May by any of these gentlemen. I do not know that any report was made by the special committee, of which Mr. Jenkins and Mr. Bonaparte were members previous to the report made in May. I

don't think I had any conversation with Waggaman concerning the University finances other than the one which I have testified took place about the middle of November, 1903.

This was all the evidence offered on behalf of the plaintiff.

Whereupon the testimony was announced as closed on both sides, and the foregoing is all the evidence that was offered or given for or on behalf of either of the parties to this suit.

And thereupon counsel for plaintiff prayed the court to instruct the jury on behalf of the plaintiff as follows:

Prayer No. 1.

182 The jury are instructed that under the pleadings and the evidence in this case they should find a verdict in favor of the plaintiff for \$79,323.41, with interest from the 11th day of June, 1907.

Prayer No. 2.

The jury are instructed that if they find from all the evidence that the plaintiff, The Catholic University of America, after the date of the bond in suit, delivered to Thomas E. Waggaman, deceased, the sum of \$89,323.41 for investment, and that the said Waggaman failed to return said sum, less a credit of \$10,000.00, then they should find in favor of the plaintiff in the sum of \$79,323.41, with interest from the date of the institution of this suit.

Prayer No. 3.

The jury are instructed that if they find from all the evidence that the plaintiff turned over to Thomas E. Waggaman, deceased, the sum of \$89,323.41, for investment after the date of the bond sued on, and that instead of investing such fund so intrusted to him, the said Waggaman appropriated said sum to his own use and substituted therefor notes made by clerks in his office, with no financial responsibility, and thereafter delivered to the plaintiff such notes, such transfer by said Waggaman to the plaintiff would constitute no defense to this suit, unless they further find that the plaintiff agreed to accept and did accept said notes and the collateral notes deposited therewith in full discharge of the obligation of the said Waggaman and sureties upon the bond in suit.

Prayer No. 4.

The jury are further instructed that there is no legal evidence in this case tending to show that the plaintiff accepted from Thomas E. Waggaman, deceased, any principal or collateral notes in discharge of his obligation and the obligation of the sureties upon the bond in suit.

But the court refused to grant said instructions or any of them, to which ruling of the court as to all and each of said prayers, the

plaintiff then and there excepted, and said exceptions were then and there noted upon the minutes of the court.

Whereupon the defendants' counsel requested the court to instruct the jury that upon the whole evidence the plaintiff could not recover in this action, which instruction was granted, to which ruling of the court the plaintiff then and there excepted, and said exception was noted upon the minutes of the court, and the jury thereupon, under direction of the court, returned a verdict for the defendants, to which direction of a verdict for the defendants the plaintiff then and there duly excepted, and said exception was noted upon the minutes of the court.

All of said exceptions stated in the foregoing Bill of Exceptions were duly noted by the court upon the minutes at the time the same were taken during the trial of said case, and are now incorporated in this Bill of Exceptions, which is signed and sealed, and made a part of the record herein this 3rd day of April, A. D. 1908, *nunc pro tunc.*

DAN THEW WRIGHT, *Justice.*

By consent:

HAMILTON, COLBERT, YERKES & HAMILTON,
For Plaintiff.

JOHN SELDEN,
Of Counsel for Def'ts.

184 Supreme Court of the District of Columbia.

MONDAY, April 20, 1908.

Session resumed pursuant to adjournment, Mr. Justice Wright presiding.

At Law. No. 49529.

THE CATHOLIC UNIVERSITY OF AMERICA, Pl'tf,
vs.

JOHN L. WAGGAMAN ET AL., Def'ts.

Upon motion of the plaintiff, it is ordered that the time within which to file the transcript of record in the Court of Appeals of the District of Columbia on the appeal herein, be, and hereby is extended to and including May 19, 1908.

185 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 184 inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made

part of this transcript, in cause No. 49529 At Law, wherein The Catholic University of America, a corporation, is plaintiff, and John Lenthal Waggaman, *et als.*, Executors, &c., are defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 14th day of April, A. D. 1908.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1905. The Catholic University of America, a corporation, appellant, *vs.* Alexander Porter Morse *et al.* Court of Appeals, District of Columbia. Filed May 19, 1908. Henry W. Hodges, clerk.

